

No. 13229

United States
Court of Appeals
for the Ninth Circuit

MICHAEL KULUKUNDIS,

Appellant,

vs.

OLAF N. STRAND,

Appellee.

Apostles on Appeal

Appeal from the United States District Court
for the District of Oregon

FILED

MAR 14 1952



No. 13229

United States
Court of Appeals
for the Ninth Circuit

MICHAEL KULUKUNDIS,

Appellant,

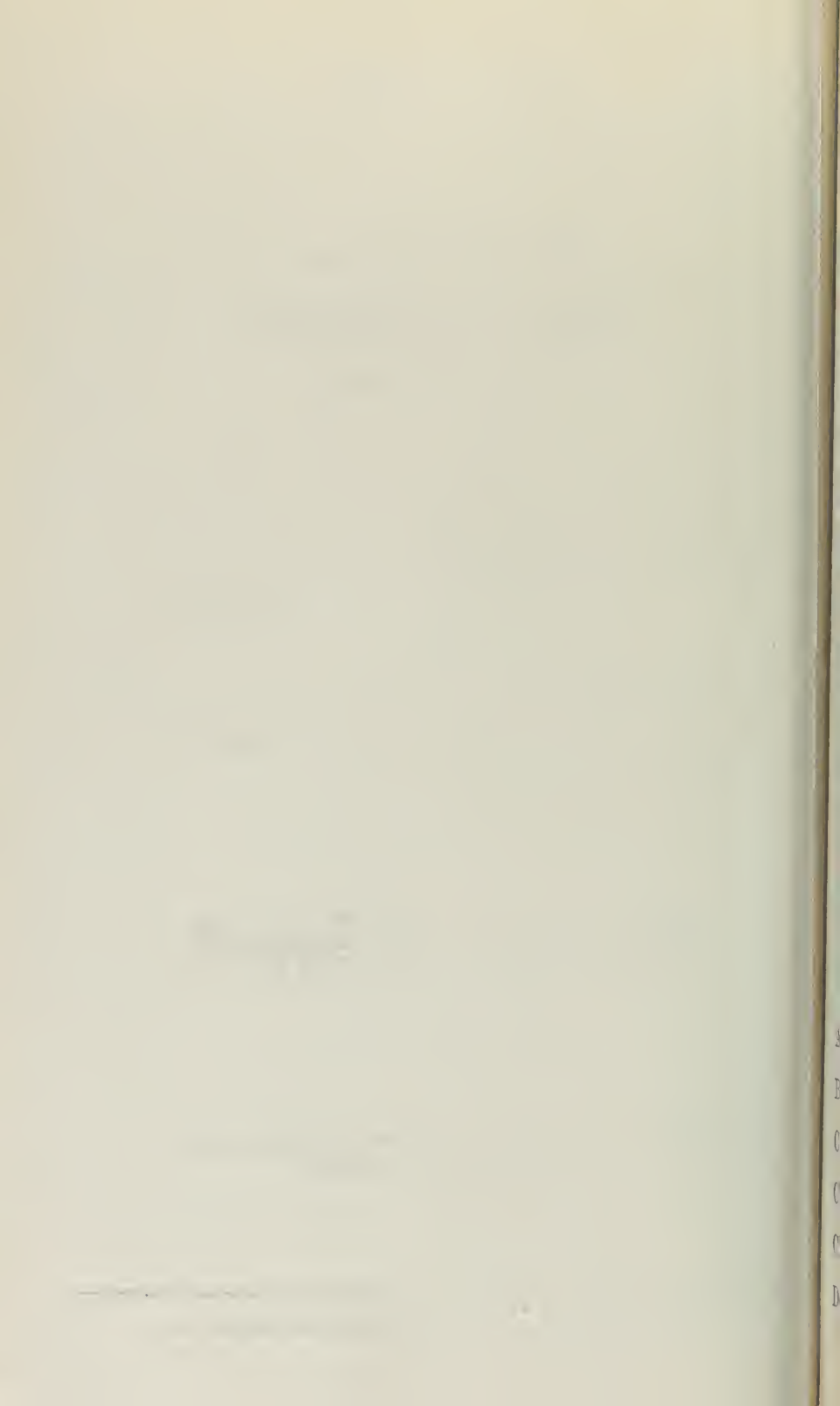
vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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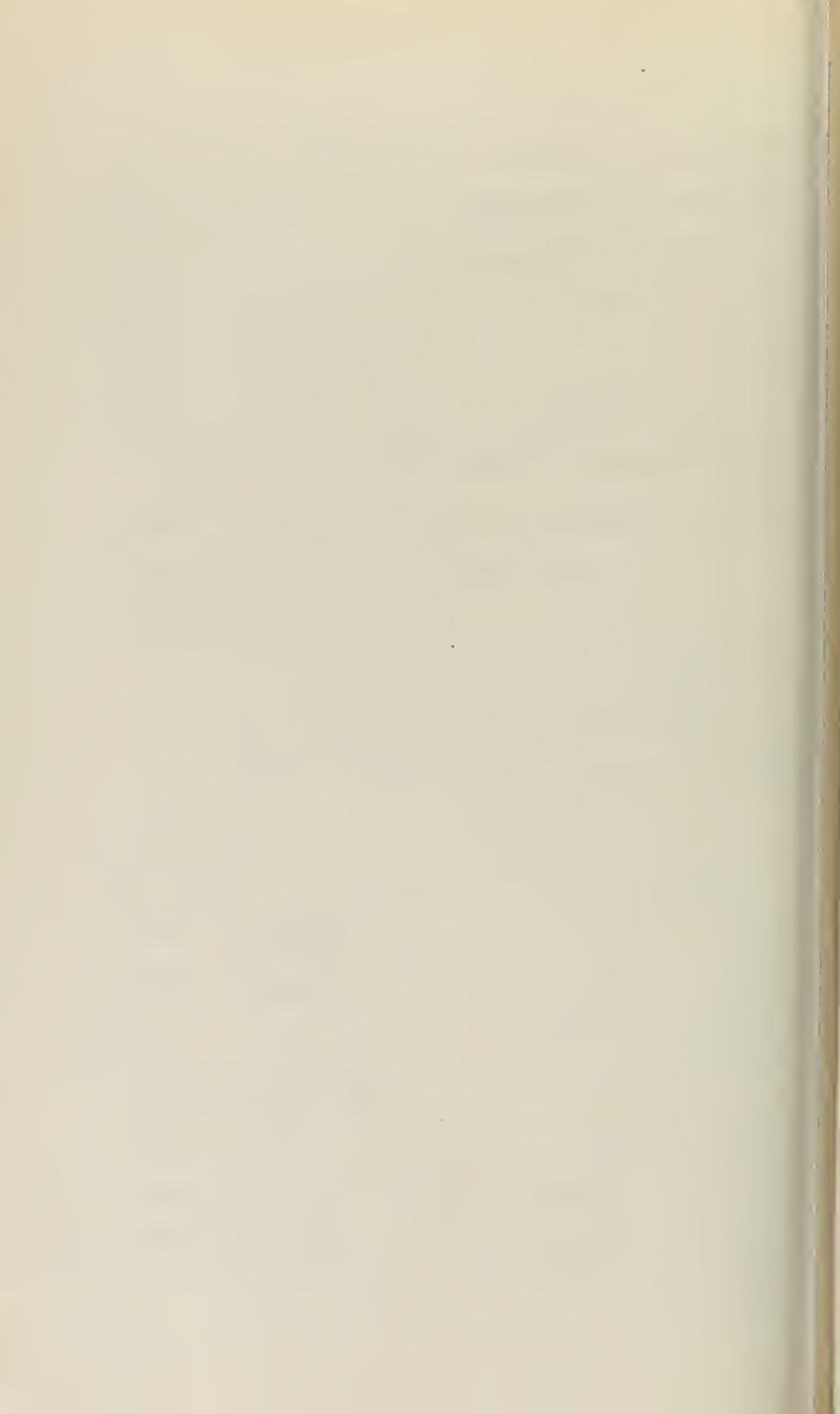
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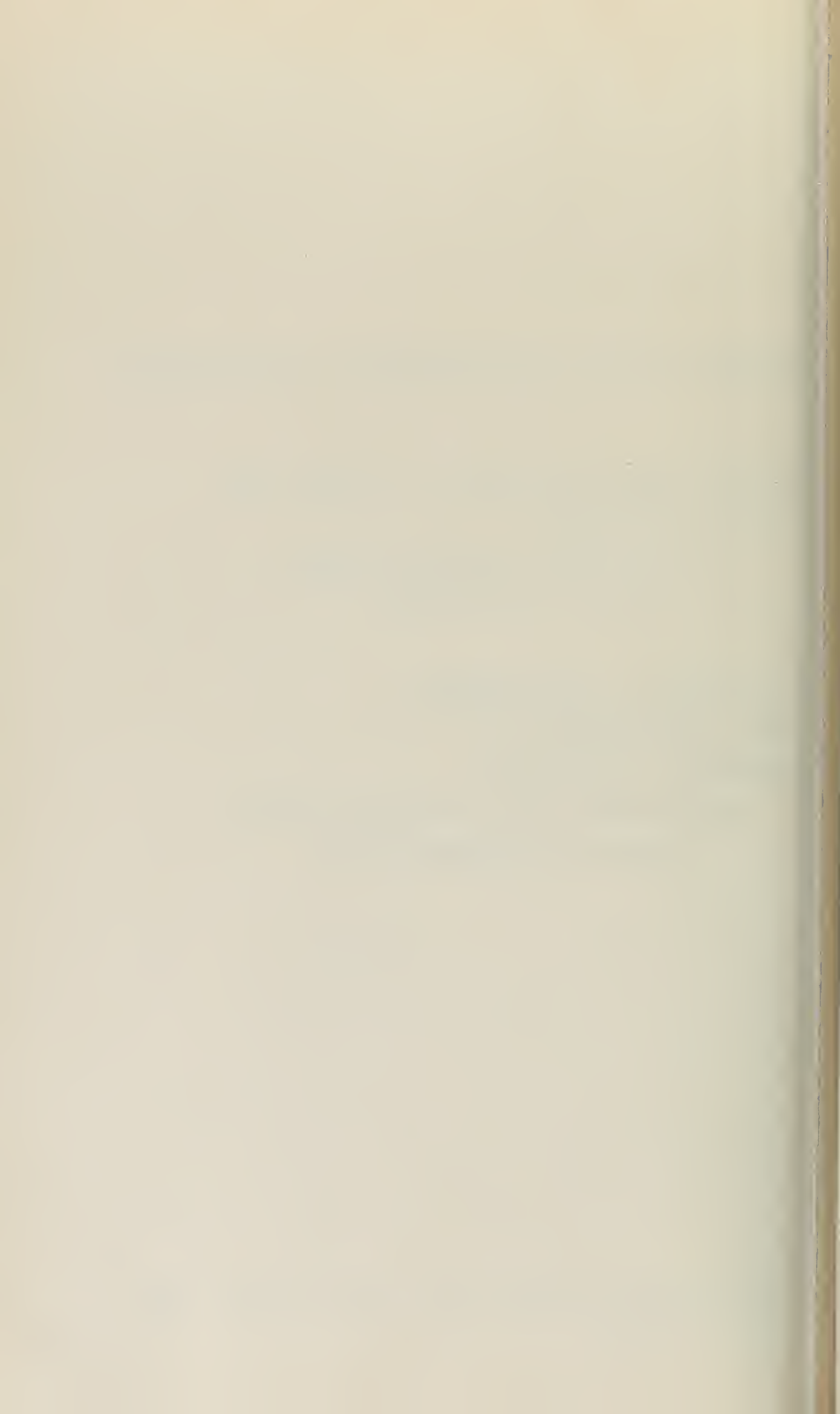


NAMES AND ADDRESSES OF ATTORNEYS

WOOD, MATTHIESSEN & WOOD, and
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Yeon Building, Portland, Oregon,
Proctors for Appellant.

GOODMAN & LEVENSON,
LEO LEVENSON and
SAMUEL JACOBSON,
1002 Spalding Bldg., Portland, Oregon,
Proctors for Appellee. [1*]

* Page numbering appearing at foot of page of original certified Reporter's Transcript.



In the District Court of the United States
for the District of Oregon

In Admiralty—Civil No. 5850

OLAF N. STRAND,

Libelant,

S.S. STATHES J. YANNAGHAS, her engines,
boilers, tackle, apparel and furniture,

Respondent.

MICHAEL KULUKUNDIS,

Claimant.

AMENDED LIBEL IN REM

To the Honorable Judges of the above entitled
Court:

Petitioner, Olaf N. Strand, having obtained leave
of Court to amend the Libel In Rem on file herein
against the S.S. Stathes J. Yannaghas, respondent,
now amends his petition and respectfully represents
as follows:

Article I.

During all times herein mentioned the S.S.
Stathes J. Yannaghas was and now is an ocean-
going vessel engaged in off-shore trade and in for-
eign commerce, operating under registration of the
Republic of Panama; that on or about the 12th day
of December, 1950, said S.S. Stathes J. Yannaghas
was moored at a dock known as the Clark Wilson
Dock in the City of Portland, County of Multno-
mah, State of Oregon, and lying in navigatable
waters of the United States; that said vessel was

and now is within the District of Oregon and within the jurisdiction of this Honorable Court.

Article II.

That at the time and place as aforesaid the libelant was employed by W. J. Jones & Son, Inc., as a stevedore and was engaged on the S.S. Stathes J. Yannaghas as a part of the longshore crew engaged in lining the holds of the vessel with timbers preparatory to taking on a wheat cargo; that at the time said libelant received the injuries complained of, as hereinafter alleged, said libelant was assisting in lining Hold No. 4 of said vessel; that in order to line said hold the libelant and the other members of the longshore crew were required to cover the 'tween deck hatches of No. 4 Hold with the hatch covers contained in said ship in order to provide support for the libelant and others for the performance of their duties and libelant was required to and did stand upon said hatch covers positioned between the strong back or cross-beam structures of said ship provided for the support of said hatch covers; that said strong backs or cross-beams were warped and out of line to such a degree that some of the hatch covers and particularly the hatch cover upon which the libelant was standing slid off its supporting strong backs or cross-beams and precipitated the libelant into the bottom of the hold, a distance of approximately 25 feet; that by reason thereof the libelant sustained serious, painful and permanent injuries as hereinafter more specifically alleged.

Article III.

That at the time and place aforementioned it was the duty of said respondent, the master of said vessel, its owners, operators and managers to provide the libelant with a safe and seaworthy condition; to promulgate and enforce proper and safe rules for the safe conduct of stevedore work on the vessel; to provide a safe place in which to work and to warn libelant of any danger arising, and to be encountered therein; that by reason of the unseaworthy condition of said vessel and the negligent failure of the respondent, the master, owners, operators, servants and employees, and each of them, to perform the foregoing duties, the libelant, at the time and place aforesaid, in pursuance of his duties as a stevedore on board said S.S. Stathes J. Yannaghans and while exercising due care and caution, sustained serious, painful and permanent injuries as hereinafter more specifically alleged; that the vessel was unseaworthy and the respondent, its master, owners, operators, servants and employees were careless and negligent in the following particulars:

(a) In providing supporting beams which would not support the hatch covers and prevent them from dislodgement;

(b) In providing defective and worn hatch covers which condition was known, or by the exercise of reasonable care should have been known by respondent;

(c) In failing and neglecting to equip said vessel with hatch covers constructed to fit the hatches to be used by Libelant;

(d) In failing and neglecting to inform Libelant of the warped and defective condition of the cross-beams and of the requirement of using hatch covers suitable for said warped cross-beams.

(e) In failing and neglecting to provide said hatch covers with numbers to indicate the proper hatch for each location on the defective and warped cross-beams;

(f) In not furnishing the libelant a safe and seaworthy place in which to work.

Article IV.

That as the proximate result of the unseaworthiness of said vessel and the negligence aforesaid, Libelant became sick and disabled, in that his face was bruised and contused, the interior of his mouth was torn and lacerated, a portion of libelant's lower lip was almost torn off, resulting in severe scarring; his back muscles and nerves were sprained, resulting in severe low back pain and he has suffered and will continue to suffer severe pain for a long time to come; that the aforesaid injuries were due wholly to the negligent and improper manner in which the respondent and those working under its direction and control maintained the hatch covers and strong backs or cross-beams in said vessel. That by reason of the injuries as aforesaid Libelant has been con-

fined to a hospital; has been and will be prevented from working; has lost and will continue to lose large sums of money which he would otherwise have earned; has paid out and will have to pay out large sums of money for medical and surgical attendance and for maintenance and cure and he is further informed and believes that he will be permanently disfigured and disabled, all to his damage in the sum of \$25,000.00.

Article V.

That immediately prior to his receiving the aforesaid injuries, libelant was a strong, healthy and able-bodied man of the age of 63 years, with a life expectancy of 12.69 years based on Commissioners Standard Ordinary morality table, and earning approximately \$400.00 per month. That as the proximate result of the negligence of respondent, the master, owners, servants and employees as aforesaid, Libelant is informed and believes that he will be unable to work for an indefinite period of time in the future on account of said injuries and will be deprived of his wages by reason thereof and prays leave to amend and insert herein the amount of wages he will have lost thereby when the same has been ascertained or to offer proof at the time of trial.

Article VI.

That libelant has been disabled in the services of the ship and rendered unable to work as the proximate result of said injuries and because thereof is

entitled to and claims maintenance money in the sum of \$7.00 per day from December 12, 1950, until such time as he recovers from said injuries sufficiently to work.

Article VII.

That all and singular the premises are true and that it is a cause civil and Maritime and within the Admiralty and maritime jurisdiction of this Honorable Court that the S.S. Stathes J. Yannaghas is within the District of Oregon. That Libelant is a citizen of the United States and that he was employed at Portland, Oregon; that his address is 4834 N.E. 26th Avenue, Portland, Oregon.

Wherefore, Libelant prays that a warrant of arrest in due form of law, according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may be used against the respondent, S.S. Stathes J. Yannaghas, her engines, boilers, tackle, apparel and furniture, and that all persons having or pertaining to have any right, title or interest therein may be cited to appear and to answer all and singular the matters hereinabove set forth and that the Court may be pleased to decree Libelant his damages with costs, and that said steamship S.S. Stathes J. Yannaghas, her engines, boilers, tackle, apparel and furniture may be condemned and sold to pay the same and that it be required to answer on oath this Libelant in the matters therein contained and that it be decreed to pay the libelant the sum of \$25,000.00 damages, plus future maintenance, costs and such other and

further relief as in law and justice he may be entitled to receive.

Dated March 1st, 1951.

GOODMAN & LEVENSON,
LEO LEVENSON,
/s/ SAMUEL JACOBSON,
of Proctors for Libelant.

Duly verified.

Acknowledgment of Service attached.

[Endorsed]: Filed March 1, 1951.

[Title of District Court and Cause.]

CLAIM OF OWNER

Comes now S. Yannaghas, master of the Steamship Stathes J. Yannaghas, and says that Michael Kulukundis is the true and lawful owner of said vessel and that he, S. Yannaghas, is the master and bailee of said vessel and is entitled to the possession of the vessel, and therefore hereby makes claim to the vessel and prays leave to defend against the libel herein.

/s/ S. YANNAGHAS,
Master.

Subscribed and sworn to before me this 15th day of December, 1950.

[Seal] /s/ MARY ANN BISHOP,
Notary Public for Oregon.

My Commission expires 8/23/54. [2]

[Endorsed]: Filed Dec. 20, 1950.

[Title of District Court and Cause.]

ANSWER OF CLAIMANT TO AMENDED
LIBEL

To the Honorable Judges of the above entitled
Court:

The answer of the above named claimant to the
amended libel respectfully says as follows:

Article I.

Claimant admits the allegations of Article I, ex-
cept that the vessel is now within the District, but
admits that it was within the district when the
original libel was filed.

Article II.

Claimant admits that libelant was employed by
W. J. Jones & Son, Inc., and was engaged in lining
the holds of the vessel preparatory to taking on a
wheat cargo, and that he was assisting in lining
Hold No. 4, but denies the remaining allegations of
Article II.

Article III.

Claimant denies the allegations of Article III.

Article IV.

Claimant denies the allegations of Article IV.

Article V.

Answering Article V, claimant denies knowledge
or information [3] sufficient to form a belief as to
the health or life expectancy or earnings of libelant.
The remaining allegations of Article V claimant
denies.

Article VI.

Claimant denies the allegations of Article VI.

Article VII.

Claimant denies that all or singular the premises are true, but admits the jurisdiction of the court and admits libelant's citizenship and address.

Further Separate Answer and Defenses

For a further, separate answer and defense, claimant alleges that libelant voluntarily and knowingly stepped upon a hatchboard which was obviously not then in its proper place, or fitted on the supporting flanges, which libelant knew or should have known, and that while so standing on said hatch-board he was attempting to pry another hatch-board into place, and in so doing caused the board on which he was standing to slip and fall into the hold, and that he fell with it, and that he was not ordered to do this by the claimant or by any of claimant's agents, nor in fact by anybody, and that he was injured by his own sole negligence in acting as above alleged; or if the Court should find that it was not his sole negligence, and that any negligence of claimant contributed to the injury, then libelant's conduct as above described likewise contributed to his injury.

For a second and further answer and defense, claimant realleges the facts alleged in its first answer and defense above, and says that libelant assumed the risk of standing on said hatch-board and attempting to pry the other one in place as alleged.

Wherefore, claimant prays that the amended libel

be dismissed, and that claimant may recover its costs and disbursements, and for such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

WOOD, MATTHIESEN & WOOD,
/s/ ERSKINE WOOD,
Proctors for Claimant.

Duly verified.

Acknowledgment of Service attached.

[Endorsed]: Filed March 8, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial before the above entitled Court on the 15th day of June, 1951, the libelant appearing in person and by his proctors, Leo Levenson and Samuel Jacobson, the respondent and claimant appearing by Erskine Wood, Proctor, and the Court having heard the testimony of the witnesses and the arguments of counsel, and having taken said cause under advisement and being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I.

On December 12th, 1950, libelant was an invitee on the respondent ocean-going ship and at the time

of the injury he was engaged in stevedore work as a liner, on the 'tween deck of hold No. 4 thereof.

II.

In performance of his duties, libelant was standing upon a hatch cover positioned between a pair of strong backs or cross-beam structures of hold No. 4 of said respondent ship and said strong-backs or cross-beams were dangerously defective and in a hazardous condition in that they were warped and out of line to such a degree that the hatch cover upon which the libelant was required to stand, without his fault, became displaced and violently precipitated the libelant to the bottom of the hold thereof. [4]

III.

The owners of the respondent were negligent and careless in failing to provide a safe and seaworthy place for the libelant to carry on his work and in failing to provide strong-backs and supporting beams which would support hatch covers and prevent their dislodgement, and the condition of the strong-backs at the time of the injury made the ship unseaworthy, which was known or should have been known by the owners of the respondent.

IV.

As a proximate result of the unseaworthiness of the ship and the negligence of the owners of the respondent, the libelant sustained injuries to his face, the interior of his mouth, a torn and lacerated lower lip resulting in a permanent scar thereon, an

injury to his back and bruises and contusions to his body. The aforesaid injuries and resulting pain and suffering were not due to any aggravation of any pre-existing condition, and, in addition, the back injury sustained by libelant resulted in an exacerbation of a pre-existing arthritic condition.

V.

Libelant's disability and suffering from the bruises and contusions, and injuries to his mouth and lip have terminated, except that a permanent scar exists on the lower lip, but the exacerbation of the arthritic condition has not terminated and is of a continuing and permanent nature, which exacerbation and resulting pain and suffering is not due wholly or in any part to any intervening or unrelated condition not connected with the aforesaid accident.

VI.

The libelant has suffered and will continue to suffer pain and has been and will be disabled from work of the type previously performed by him and he has suffered and will suffer loss from the impairment of his ability to work and from expenditures necessarily incurred and which will be incurred for medical treatment, hospitalization and medicines.

VII.

The libelant's earning capacity at the time he was injured was \$4,200.00 to \$4,800.00 per year.

VIII.

Libelant was not guilty of negligence contribut-

ing to the accident and the injuries sustained by him as a result thereof.

IX.

In the performance of his duties the libelant did not assume the risk of the injuries sustained by him incident to his employment as a stevedore.

X.

As a result of the injuries sustained by libelant as a proximate result of the unseaworthiness of the vessel and the negligence of the owners of respondent, the libelant was damaged in the amount of \$10,000.

Based upon the Foregoing Findings of Fact, the Court hereby makes and finds the following:

CONCLUSIONS OF LAW

I.

It was the duty of respondent to furnish the libelant a safe place to work and to keep and maintain the strong-backs and hatch covers on the vessel reasonably safe from defects and in a safe and seaworthy condition.

II.

The defects in the strong-backs were such as to make the ship unseaworthy.

III.

The owners of respondent were negligent and failed in their duty to the libelant and the injuries suffered by him were due solely to the negligence

of said owners of respondent and the unseaworthy condition of the respondent ship.

III.

The libelant has a right to recover for the injuries sustained by him by reason of the negligence of the owners and the unseaworthy condition of respondent ship.

IV.

The libelant is entitled to a judgment against respondent as fair compensation by way of damages in the sum of \$10,000.

Dated this 3rd day of October, 1951.

/s/ CLAUDE McCOLLOCH,
U. S. District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed October 3, 1951.

In the District Court of the United States
for the District of Oregon

In Admiralty—Civil No. 5850

OLAF N. STRAND,

Libelant,

vs.

S.S. STATHES J. YANNAGHAS, her engines,
boilers, tackle, apparel and furniture,

Respondent.

MICHAEL KULUKUNDIS,

Claimant.

FINAL DECREE

This cause having come on regularly for trial before the above entitled Court on the 15th day of June, 1951, the libelant appearing in person and by his proctors, Leo Levenson and Samuel Jacobson, the respondent and claimant appearing by Erskine Wood, Proctor, and the Court having heard the testimony of the witnesses and the arguments of counsel, and having taken the matter under advisement and being fully advised and having on the 3rd day of October 1951, made and filed findings of fact and conclusions of law wherein the Court found that libelant is entitled to a decree against the respondent in the sum of Ten Thousand and no/100 (\$10,000.00) Dollars general damages; and

It appearing to the Court from the files herein that a claim for said steamship has been filed by Michael Kulukundis and that said claimant and National Surety Corporation, his surety, have ex-

ecuted and filed herein their stipulation consenting and agreeing to abide by and pay to the libelant, Olaf N. Strand, such sums as may be awarded to him by the final decree entered herein and that in case of default and contumacy on the part of the claimant, execution may issue against their goods, chattels and land for the sum of Ten Thousand (\$10,000.00) Dollars. [5]

Now, therefore, upon motion of the Proctors for Libelant:

It is Ordered, Adjudged and Decreed by the Court that the Libelant, Olaf N. Strand, do have and recover of and from the claimant, Michael Kulukundis, and of and from his surety, National Surety Corporation, the sum of Ten Thousand (\$10,000.00) Dollars; and also that Libelant have and recover from the claimant and of and from said surety, his costs and disbursements incurred herein taxed at \$. for all of which sums execution may issue as authorized by law; and

It is further Ordered, Adjudged and Decreed that the Clerk of the Court pay to the Libelant, Olaf N. Strand, out of the registry of this Court the sum of Two Hundred (\$200.00) Dollars deposited by him to secure costs and disbursements, less \$. . . Clerk's deductions and fees.

Dated this 20th day of October, 1951.

/s/ CLAUDE McCOLLOCH,
United States District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed October 20, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Olaf N. Strand and Goodman & Levenson and
Samuel Jacobson, his proctors:

Notice is hereby given that claimant, Michael Kulukundis, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree, and the whole thereof, entered in this cause on October 20, 1951, by which decree Olaf N. Strand was awarded \$10,000.00 and costs against this claimant Michael Kulukundis.

Dated: December 26, 1951.

/s/ ERSKINE WOOD,
/s/ WOOD, MATTHIESSEN & WOOD,
Proctors for claimant.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 28, 1951. [6]

[Title of District Court and Cause.]

PETITION FOR APPEAL

The claimant Michael Kulukundis, being aggrieved by the final decree entered in this cause on October 20, 1951, prays that he may be allowed to appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit.

MICHAEL KULUKUNDIS,
/s/ By ERSKINE WOOD,
His Proctor.

It Is Hereby Ordered that the foregoing petition for appeal be, and the same is, hereby allowed.

Dated: December 28th, 1951.

/s/ CLAUDE McCOLLOCH,
United States District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 28, 1951. [7]

[Title of District Court and Cause.]

CITATION ON APPEAL

To: Olaf N. Strand, and Goodman & Levenson and Samuel Jacobson, his proctors:

Whereas, claimant Michael Kulukundis has lately appealed to the United States Court of Appeals for the Ninth Circuit from the final decree rendered in the above entitled cause on October 20, 1951, awarding damages to libelant Olaf N. Strand and has given the security required by law;

You Are Therefore Hereby Cited and Admonished to be and appear before said United States Court of Appeals for the Ninth Circuit, at San Francisco, California, within forty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice done to the parties in that behalf.

Given under my hand at Portland, in said District, this 28th day of December, 1951.

/s/ CLAUDE McCOLLOCH,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 28, 1951.

[8]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

The claimant, Michael Kulukundis, appealing from the final decree entered in this court and cause on October 20, 1951, makes the following assignment of error:

I.

The trial court erred in finding negligence against the respondent and that it was a proximate cause of libelant's injuries, and in awarding damages in favor of libelant.

II.

The trial court erred in finding that the steamship *Stathes J. Yannaghas* was unseaworthy in respect to the hatch beams and hatch covers where libelant was working, or otherwise, and that such unseaworthiness was the proximate cause of libelant's injuries.

III.

The trial court erred in decreeing that libelant Strand have and recover from claimant Kulukundis and his surety the sum of \$10,000 and costs.

IV.

The trial court erred in finding that libelant Olaf N. Strand did not assume the risk of the job in which he was engaged, to-wit: covering up a hatch under the conditions as disclosed by the evidence. [9]

V.

If the respondent was guilty of negligence, which

claimant denies, the trial court erred in finding that Olaf N. Strand was not guilty of contributory negligence contributing to his injuries, and in not dividing the damages accordingly.

/s/ ERSKINE WOOD,

Of Proctors for claimant and appellant Michael
Kulukundis.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 28, 1951.

[Title of District Court and Cause.]

BOND ON APPEAL STAYING EXECUTION

Know All Men By These Presents, that we the undersigned, Michael Kulukundis and National Surety Corporation, authorized to transact surety business in the State of Oregon, are held and firmly bound unto Olaf N. Strand, libelant, in the sum of Fifteen Hundred Dollars, to be paid to said Olaf N. Strand, his successors or assigns for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors and assigns, jointly and severally firmly by these presents. Sealed with our seals and dated the 26th day of December, 1951.

Whereas, Michael Kulukundis, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the District Court

of the United States for the District of Oregon of October 20, 1951, in a suit in which said Olaf N. Strand is libelant, The S.S. Stathes J. Yannaghas is respondent and Michael Kulukundis is claimant and said Michael Kulukundis desires that during such an appeal execution of said decree be stayed;

Now, Therefore, the condition of this obligation is such that if said Michael Kulukundis shall prosecute said appeal with effect and pay all costs which may be awarded against him as such appellant if the appeal is not sustained, and if he shall abide by and perform whatever [10] decree may be rendered by said Court of Appeals or on the mandate of the court by the court below, then this obligation shall be void, otherwise to remain in full force and effect.

MICHAEL KULUKUNDIS,

/s/ By ERSKINE WOOD,
Proctor.

[Seal]

NATIONAL SURETY COR-
PORATION,

/s/ By W. B. GILLIAN,
Attorney-in-Fact.

The said bond is approved and execution of the decree is stayed.

/s/ CLAUDE McCOLLOCH,
United States District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 28, 1951.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of amended libel, claim of owner, answer of claimant, findings of fact and conclusions of law, final decree, notice of appeal, petition for appeal, citation on appeal, assignments of error, bond on appeal, order for clerk to send exhibits, designation of record on appeal, and transcript of docket entries, constitute the record on appeal from a decree of said court in a cause therein numbered Civil 5850, in which Olaf N. Strand is libelant and appellee, and Michael Kulukundis is claimant and appellant; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith duplicate of transcript of proceedings dated June 15, June 19, and October 1, 1951, filed in this office in this cause, together with exhibits Nos. 1 to 14 inclusive.

I further certify that the cost of preparing the transcript and filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 9th day of January, 1952.

[Seal] LOWELL MUNDORFF,
 Clerk.

/s/ By F. L. BUCK,
 Chief Deputy.

[13]

In the United States District Court
for the District of Oregon

In Admiralty—Civil No. 5850

OLAF N. STRAND,

Libelant,

vs.

S.S. STATHES J. YANNAGHAS, her engines,
boilers, tackle, apparel and furniture,
Respondent.

TRANSCRIPT OF TESTIMONY AND
PROCEEDINGS

Portland, Oregon, June 15, 1951

Before: Honorable Claude McColloch, Judge.

Appearances: Messrs. Leo Levenson and Samuel Jacobson, Proctors for Libelant; Mr. Erskine Wood (Wood, Matthiessen & Wood), of Proctors for Respondent. [1*]

The Court: Are you ready?

Mr. Jacobson: Yes, your Honor.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: Call your witnesses.

Mr. Jacobson: I'd like to make a statement, first, your Honor.

The Court: Not too long. I have read the pleadings.

(Thereupon, a brief opening statement was made by proctor for the libelant.)

Mr. Jacobson: Mr. McDonald, please.

NORMAN McDONALD,

called in behalf of the libelant, and, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Jacobson): Where do you reside, Mr. McDonald? A. How?

Q. Where do you reside?

A. 1762 North Ross.

Q. What type of work do you follow, Mr. McDonald? A. Longshoring.

Q. How long have you been doing that type of work? A. Well, about 11 years.

Q. Now, did you do any work on a ship known as the Stathes J. Yannaghas, a Greek ship?

A. Yes, I was lining on there.

Q. Was that ship berthed at the Clark & Wilson Dock in Portland, [2] Oregon?

A. Clark & Wilson.

Q. Do you recall the date when you were working on that ship? A. No, I do not.

Q. Were you a member of a crew, longshore crew that was sent down to this ship for the purposes of lining it for the wheat cargo or a grain cargo?

(Testimony of Norman McDonald.)

A. Yes, I was.

Q. Do you recall whether or not a Mr. Olaf Strand was a member of that gang?

A. Yes, he was.

Q. Was this ship being lined for cargo about December, 1950, was it in December?

A. It was, yes, I believe it was. I just don't remember the date.

Q. Now, how many members were in that long-shore crew?

A. Let's see, there was three winch drivers and at least seven men in the hold. I believe 10 or 11, let's see now, and a hatch boss, 11 men.

Q. Now when you and the other members of the crew went down to the ship what work were you doing there?

A. Well, the first thing we do is you uncover and cover the top deck so you can put lumber down in the lower holds, then your shelter deck you got to put hatch covers on when you get your lumber down, try to get your hatch covers on and leave one space [3] open so you get your lumber down in the lower holds.

Q. What hold did you and the other crew members work on when you first went down there?

A. When first went down worked in No. 3 hold.

Q. And that work was to build up a temporary bulkhead known as lining; is that correct?

A. That's right.

Q. What type of work were you doing down

(Testimony of Norman McDonald.)

there at that particular time? A. Lining.

Q. Was it on a 'tweendeck, or was it down in the hold or where? A. On No. 3?

Q. Yes.

A. That was down in the hold.

Q. Now did you and the other members of the longshore gang, did you complete the job on No. 3 hold?

A. No, they didn't know just how much feeder box, how much space they wanted for the feeder box, so they shifted us over to No. 4 in the afternoon.

Q. Did the whole gang then go over to hold No. 4? A. Yes.

Q. When you got to No. 4, what did you find at hold No. 4? Was it covered? Did they have the strongbacks in or what?

A. No, they didn't, put strongbacks in, and the hatch covers were back, in the shelter deck. They were back in the wing. [4]

Q. Did any of the members of the gang or the hold gang start putting some hatch covers down on top of the strongbacks in hold No. 4?

A. Yes, we did.

Q. Were you among them? A. Yes.

Q. Will you tell the Court what condition you found the strongbacks to be in at the time you were putting down some hatch covers?

A. Well, we tried to put them on, and they would not fit. The strongbacks, they were bent out of shape, and they would not fit. You would get one

(Testimony of Norman McDonald.)

into fit and the rest wouldn't, you couldn't get any more in, maybe get them half way in, something like that, just have to take them out, and we monkeyed around there for over half an hour or more, and all of us, I will say, the six or seven of us were in the hold, and so I told the walking boss, looked over the hatch a couple times, I told him, I said, "We can't do nothing here at all." "We can't get these hatch covers up," I said, "the beams are all sprung so bad that we can't get them on so," I says, "I am going to try to get it on, get down the lower hold to the lumber down there and see what we are going to do." And as they had one pretty near in, I guess, we went down in the lower hold, another fellow and I, and evidently Mr. Strand and Mr. Ramsby, they were working on one end, and it fell through. I looked up and see Mr. Strand come down just like that, just [5] up-ending, coming down through there.

Q. Well, coming back to the time you and the rest of the crew members or some of the gang were getting the hold in readiness to line that part of the ship, there were some hatch covers put down by some of the crew members before you went down into the hold; is that correct?

A. Yes, we all worked on them.

Q. And you found that some of them would not fit, and you just gave up and went down into the hold?

A. Yes, I went down into the hold, down in the lower hold.

(Testimony of Norman McDonald.)

Q. Down to the bottom of the ship, lower hold?

A. To land the lumber down there, to get the lumber down in the lower hold.

Q. All right now, the strongbacks, are they a part of the ship?

A. Oh, yes, they are part of the ship. The strongbacks, they go across the hatch, and then you put the hatch covers on, and the hatch cover is supposed to fit free and go in there easy. They go across the strongbacks.

Q. What type of ship was this?

A. Liberty.

Q. An American built ship? A. Yes.

Q. Do you know of your own knowledge as to whether or not the spaces between the strongbacks as they are put on the hold, are they uniformly even? [6]

A. Yes, they should be, yes.

Q. As you install them into the hold in their places where the, make them fit into and tie them down; is that correct? A. Tie them down?

Q. Well, I mean screw them in or fit them so that they will stay put?

A. No, they are supposed to stay. They are supposed to fit in there. There is a groove that they are to fit in there, and they are supposed to fit in there without anything to hold them in. You see what I mean. If everything is in shape, they are supposed to fit in there, and you are supposed to be able to slide them back and forth. That is the way we are doing our lining job, slide them back and forth, put

(Testimony of Norman McDonald.)

the uprights inside of the coaming, put uprights there and you have got to have the hatch covers far enough away so that we get them 4 by 6's in there. In other words, split the hatch covers up. We take about two out of each layer of a lining job, take about two out, and spread them apart, work on it that way.

Q. And the strongbacks themselves are evenly spaced in relation to the hold? A. Yes.

Q. They are fixed locations where the strongbacks are fitted in relation to the coaming?

A. Yes, there is a slot for them to go in each end. There is a slot. [7]

Q. And after those strongbacks are put in they are fitted on top with a flange, a T-shaped flange; is that correct, a fitted T-shape?

A. That is on them, yes, it is on them.

Q. It is on those, between those that the hatch covers are supposed to fit?

A. That's right, that's right.

Q. Now, in this particular hold did you see, yourself, as to whether or not those strongbacks were all in parallel lines and not out of line at all?

A. They were not. They were all out of shape. They were bent out of shape, and that's why we couldn't get the hatch covers on there the way we should have, and they wasn't right at all.

Q. Now getting back to each of the strongbacks, they each have a vertical fin or piece that is a part of the flange, is that correct?

A. Yes, right in the center.

(Testimony of Norman McDonald.)

Q. Yes? A. Yes, right in the center, yes.

Q. Now did you check and see whether or not those were in line as well as the strongbacks themselves?

A. Well, if a strongback is in shape, if it is not crooked and out of shape, the hatch covers go right there easy. As soon as you fit the hatch cover on you can tell. Sometimes if, it's a little bit tight. You have got to screw them in a little bit, [8] but this was all out of shape.

Q. What about the top part? Were some of those bent over?

A. They was bent, too. That flange, that flange was bent in several places, and it wouldn't go down.

Q. Well, what happened upon trying to put your hatch covers down on the flange of the—between the strongbacks?

A. Well, you couldn't, you can't get them down. You know, sometimes you can pry or pry a little bit. There is quite a few times that they are a little bit tight, you know, to go in. A beam might be sprung just a little bit, and you can get the stick in there and pry them, and they will go down if they are not sprung too much.

Q. Now if the strongbacks on a ship, whether it is a Liberty ship or not, are in proper alignment, is it a fact that the hatch covers will fit in without any effort whatever? A. Yes.

Q. Now in this particular hold, Mr. McDonald, you, yourself, found that you couldn't fit down some of the hatch covers; is that correct?

(Testimony of Norman McDonald.)

A. That's right.

Mr. Jacobson: I will have these marked for identification, please.

(Photographs marked Libelant's 1 through 6 inclusive for identification.)

Q. (By Mr. Jacobson): Will you hand these to the witness, please. [9] Mr. McDonald, you are being handed six photographs marked Libelant's Exhibits 1 to 6 for identification. Those are pictures of hold No. —

Mr. Wood: May I see them, please?

Mr. Jacobson: Oh, I beg your pardon.

The Court: After this exchange your pictures before trial. Pre-trial practice should have taught everybody that by now.

Q. (By Mr. Jacobson): I show you six photographs of hold No. 4 and ask you if you recognize the hold from those photographs?

A. Yes, I do, because I—because after Mr. Strand fell we put all these false hatches in. They are called false hatches. The gate man put them in because the other hatches wouldn't fit.

Q. Are those photographs a fair representation of the hold as you saw it on the day of the accident?

A. Yes, they are.

Mr. Jacobson: Your Honor, we offer those photographs in evidence.

Mr. Wood: No objection.

The Court: They are admitted.

(Testimony of Norman McDonald.)

(Thereupon photographs previously marked Libelant's 1 through 6 inclusive were received in evidence as Libelant's Exhibits 1 through 6, inclusive.)

Q. (By Mr. Jacobson): Now, I believe you stated during your previous testimony that you saw Mr. Strand fall; is that correct?

A. Well, yes, I seen him when he was, just when he started I [10] just—somebody hollered, "Heads up," and just looked up right now. Of course, it doesn't take long to fall 25 feet, and when I seen him, he went over like that a couple times before he hit the shaft alley, and we on the other side, this other fellow and I jumped over across the shaft alley, went across, and he was laying there on his back.

Q. How far from the hold is the shaft alley?

A. I think the shaft alley is about eight feet. That is, the shaft alley is eight feet from the deck. I believe it's eight feet. I wouldn't say for sure.

Q. But you know he hit that alley first?

A. Hit that a glancing blow, yes.

Q. Then from there landed down in the bottom of the hold?

A. Landed down in the bottom of the hold.

Q. Do you recall what happened? Was there anything else that you saw fall?

A. A hatch cover.

Q. Do you recall whether or not that contacted him at all as he was falling?

(Testimony of Norman McDonald.)

A. Well, I couldn't say for sure. I don't believe it did hit him because everything like that happened so quick that it's pretty hard to say.

Q. Now when you came to him what condition did you find him in, when you came to him after he fell?

A. Well, he was unconscious, and his face here was all blood [11] and cut, and, of course, he was so bloody, it was hard to tell just what happened. I hollered for blankets. The first thing I thought of was blankets and to get a stretcher, and I went up, tried to get some blankets right away because a fellow gets a jar like that, he gets a jolt, he might get pneumonia right away, so the main thing is to try to cover him up with blankets if you can, and we got the stretcher down there.

Q. Did you help put him into the stretcher?

A. No, I didn't. I was on deck then. There was three or four other guys, fellows down there, I didn't help on the stretcher.

Q. He was brought out from the hold by stretcher?

A. Yes, and the gear.

Q. And the winch?

A. The winches got him out of the hold.

Q. Now is it customary, Mr. McDonald, to use false hatch covers on ships?

A. No, the other hatch covers should fit. The other hatch covers should fit. We use false hatches where we put up a bulkhead, like here is your bulkhead. We do put false hatches in there so we can pull them out after we get their feeder box made—

(Testimony of Norman McDonald.)

pardon me, after we get our feeder box made, we can pull those false hatches out so we can work our pan in there. That's the only time we work with false hatches or are supposed to.

Q. At this particular time, Mr. McDonald, were false hatch covers being used prior to this accident?

A. No.

Q. Do you know whether or not instructions were given to put false hatch covers in lieu of standard hatch covers there on the ship?

A. After Mr. Strand fell, yes, we put in false hatches.

Q. Now do you know, of your own knowledge, as to what was done in regards to the strongbacks after the accident?

A. Well, the next day they were down there, had some burners down there, and they was straightening them up. They were heating them and pounding on them, getting them straightened up.

Mr. Jacobson: You may cross examine.

Cross Examination

Q. (By Mr. Wood): Mr. McDonald, I take it you have been a longshoreman for a good number of years, have you? A. 11 years, yes.

Q. 11 years. It is not so unusual, is it, for the strongbacks to be a little bit bent sometimes?

A. Oh, a little bit bent, yes, it is not unusual. Once in a while you have to put one in even on the top deck. You have to pry it in, but when you get any hatch cover, you can't get any hatch covers in at all, that's a little bit unusual, because——

(Testimony of Norman McDonald.)

Q. I mean the strongbacks are bent on voyages either because heavy cargo might lift and hit them, or probably carrying bulk cargo they are strained in some way; that's a fact, isn't it? [13]

A. Well, I guess something must have hit these because they were sure out of shape.

Q. Well, I say, you have seen that before, have you not?

A. Well, not as bad as that, as I recollect.

Q. Well, not as bad, you say, but you have seen it before where they were strongbacks that have been bent? That is not so unusual, is it?

A. No, I don't believe I have seen it. I have seen it where we had to use a little pry to get them in, get the hatch covers in, but I never seen them when you couldn't get them in at all.

Q. Haven't you seen them bent sufficiently so that you have to chock a hatch cover to make it stay in place? A. Yes, yes, I have seen that.

Q. You have seen them bent sufficiently so that in covering up——

A. That would be a short hatch cover we chock though. It's a little short, and you chock it on each end so it wouldn't slide out and go down.

Q. That's right.

A. That's not strongbacks; that's the hatch cover that is short.

Q. Well, the same thing happens if the strongback is bent a little. That makes the hatch cover short, doesn't it? A. Well, at times, yes.

Q. Isn't it a fact that you often have to select

(Testimony of Norman McDonald.)

certain hatch covers to go in certain parts of the hatch to fit, don't you? In other words, you have to sometimes take a hatch board and put it [14] in one place on the hatch and another hatch board of a slightly different length on another part of the hatch?

A. Yes, that happens once in a while on a Liberty.

Q. In fact, that is——

A. Maybe a short hatch, maybe you have to have a long hatch and a short one, maybe half an inch difference in them. You may have to change them around.

Q. In fact, they even number the hatch boards to make sure they will go exactly in the same spot all the time, don't they?

A. No, they are numbered to a certain extent but on Liberty they fit, or are supposed to be all uniform. There is one little short hatch on some of them on one end. It is according to where they were built. Of course, you couldn't confuse them with the other hatches because they are a foot or so shorter.

Q. Have you ever encountered hatch boards that were too long? A. Yes.

Q. What did you do in that instance? How did you make them fit?

A. How did we make them fit? Well, it's according to how, too long they were. I have been on foreign ships where I have seen the crew cut them off, make new ones.

(Testimony of Norman McDonald.)

Q. At the request of the longshore boss, or what?

A. At the request of the walking boss, yes.

Q. Now you said that when you went to work on the 'tweendeck hatch you told the walking boss that these things were too—that they wouldn't fit? [15]

A. Yes.

Q. What did he do, tell you to go on working anyway or what?

A. Yes, he said, "They come out of there; they have got to go back in."

Q. What?

A. He said, "They come out of there; they have got to go back in."

Q. Who was the walking boss?

A. Oh, Charlie, at the job, Charlie Pelletier at the job.

Q. Pelletier, so you men protested to the walking boss, and he said go ahead and do the work anyway; is that correct?

A. Well, do the same thing. He said, "They come out of there," and he said, "they should go back in."

Q. But you then gave up trying to work on the hatches and you went down below in the hold?

A. Yes, I was going to land some lumber, lower hold lumber, another fellow and I.

Q. What was the purpose of covering the hatch anyway?

A. Well, we have got to cover the hatch because you have got to stand there. You have got to pull up timbers. Then you have got to pull up this lining to

(Testimony of Norman McDonald.)

make this shifting board. You have got two men. You have got to have a footing to stand there, and after you get the shifting board up from the lower hold then you have got to build your feeder box. You have got to have a place to walk down there.

Q. In other words, you wanted it for a stage to walk on, is that right?

A. Well, yes, in a way. It has got to be there to work on. You have got to have it. You cannot stand in space there, you know, with them hatch covers on.

Q. Well, that's what it amounted to, a stage from which you men could work to build a bulkhead; is that it?

A. Well, yes, then you have to use it on the shelter deck, too. You have to use it there, too, because you are building this feeder box around there. It's a square box. You have got to have a place to walk to get your lumber in there and everything.

Q. If you just wanted to use it as a staging from which to erect the bulkhead you could have just laid on boards across those beams whether they fitted or not, and stood on them, couldn't you? A. No.

Q. Why not?

A. Well, I was just trying to tell you, after all, you have got to take the hatches out. We are going to take all these hatches out afterwards so they can get the planks out in the feeder box. If we put on planks across there we couldn't get the planks out after building the feeder box.

Q. Is there a piece of a chock here?

A. There is one right on the end of the——

(Testimony of Norman McDonald.)

Q. Somebody has around here hold No. 4, fore and aft. Do you [17] recognize what this is supposed to represent? These are, I suppose, the strongbacks, are they? A. That's right.

Q. Are there many strongbacks in the hatch?

A. Five.

Q. One, two, three, four, five? A. Yes.

Q. Is that right? A. Right, yes.

Q. You were working underneath them down below in the hold? We are looking down now?

A. I know what you mean. No, first we try to put our, first we tried to put our hatch covers on. They were all off. There was no hatch covers on.

Q. They were out in the wing?

A. They were out in the wing, yes.

Q. You went and selected them?

A. That's right.

Q. Then what?

A. They wouldn't fit. Once in a while one would go in; once in a while you wouldn't, as they wouldn't fit, I said, "It is no good. We can't get them in," I said, "I won't——" and I went down to the lower hold to work with this lumber.

Q. You said, "I won't", and then stopped. There was no other——

A. Well, I said, "I won't try to put them in there, and do something else. [18]

Q. Who did you say that to, the walking boss?

A. No, myself. He wasn't there. This other fellow and I went down in the lower hold. Well, I said to him, "You can't get them hatch covers in there,"

(Testimony of Norman McDonald.)

I said, "the way they should be," and I said, "Let's go down and land the lumber." So then we went down in the lower hold.

Q. But the point I have in mind, Mr. McDonald, is simply this. You were not covering those up for any cargo; you were making a platform on which the workmen could stand while they were erecting this bulkhead from the shaft alley upward; is that right? A. Yes.

Q. So you could have taken any kind of boards and laid them across those strongbacks, and if they were long enough to cross the strongbacks, you could have used them as a platform, couldn't you?

A. No, that's what I was trying—you see, if this—we are looking at it this way. This goes up this way. Well, we put the box in there, a feeder box they call it, feeder box. Well, you might—the end of it might come right here, see? (Indicating.)

Q. Yes?

A. Well, we take the other hatches out. We have got to put false hatches in here. Then we put boards across so the end of it is here, and then when we get through we can pull them 2 by 12's out, you see, use a false—they call them false hatches, see?

Q. But for the purpose of erecting the bulkhead underneath, [19] which was the only thing you were doing at this time, any boards would have done there, wouldn't they, as long as they stretched from one to the other?

A. Well then, we would have to take them all out again.

(Testimony of Norman McDonald.)

Q. Maybe you would. A. Yes.

Q. But it wasn't necessary that they fit nicely in the flanges to give you a staging to lift boards up from the lower hold in making the bulkhead, was it? They didn't have to fit nicely for that purpose, did they?

A. Why, yes, the man that is pulling up there, he has got to have some place to stand. He has got to have a good backing or something. He has got to have it covered up.

Q. You say some of the hatch boards fit, and some did not; is that right? A. Yes.

Q. Why was that?

A. Well, because the beams were all sprung out of shape. They were bent. There is a flange number up on top of the beams.

Q. I will ask you, did they fail to fit because they were too long or too short?

A. Well, they wouldn't go in to the what-you-call-it. That was bent over. Some of them was bent.

Q. In other words, the hatch boards were too long; is that right? [20]

A. Yes, too long and too short.

Q. Both?

A. Yes, I guess you would say that. I guess you might say that, yes.

Q. Where did you get these false hatch covers from with which you covered the hatch afterwards?

A. We had to cut them, to cut them for size.

Q. Where did you get the lumber?

(Testimony of Norman McDonald.)

A. Lumber? On deck. They sent them in to us from the deck.

Q. It was there available all the time then before?
A. Oh, yes.

Q. You could have put them on before the accident?
A. Could have, yes.

Q. Why didn't you?

A. If you gave us the lumber, if the walking boss gave us the lumber we probably would have, and told us to put them in there.

Q. Well, when you protested to the walking boss that these hatch covers would not fit, did you make any request, or did this libelant, Mr. Strand, make any request for false hatch covers or anything?

A. Well, I just don't remember, but I remember telling him a couple times though.

Q. The walking boss, you mean?

A. Yes, that there wasn't, it wasn't safe to work there. He said, "They must have come out of there," he said, "so put them [21] back in again."

The Court: How did that accident happen? You tell me your view of it, will you?

Mr. Wood: Me tell you my view?

The Court: Yes, you tell me your view.

Mr. Wood: Well, my information is, your Honor, that there was—is this, yes, this is the foreward starboard corner.

The Court: Is that where he fell in the hold?

Mr. Wood: Yes, he fell there. (Indicating.)

The Witness: Forward.

Mr. Wood: And there was some hatch covers,

(Testimony of Norman McDonald.)

two or three of them there, I don't know just how many, and one or two there, two or three there. These were long and lapped over this strongback. They were too long to sit down in the flange and Strand stood on one of these, and with a pry he tried to pry this one into place. (Indicating.) He tried to pry it forward a little bit so it would slip down on the flange and inside. He pried himself. Then he pried this board that way a little bit so it fell into the holds.

The Court: Is that your understanding?

The Witness: I believe that is the approximate way it was done.

The Court: All right.

The Witness: But I don't know the exact location. [22]

Q. (By Mr. Wood): When you first went there the whole hatch was uncovered, was it?

A. Right.

Q. Such hatch boards as were put in place there were put on, put in place by some of you longshoremen, weren't they; is that right?

A. Yes, that's right.

Q. In other words, not by the ship's crew, but you men were doing the work? A. No.

Q. Now who ordered the false hatches put in?

A. Well, after Mr. Strand fell, you mean?

Q. Yes. A. The walking boss.

Q. From then on everything fit, and it was all right?

A. Well, yes, cut to size, to fit, yes.

(Testimony of Norman McDonald.)

Q. I say, they were cut and fit and everything went all right? A. Yes.

Q. The accident happened because that was not done before the accident instead of afterwards; is that right?

A. Well, I suppose you could say that. I don't know, but——

Q. Did you consider it a dangerous place to work? Is that the reason you left and went down into the hold? You thought it was a dangerous place to work? [23]

A. Yes, because we couldn't, well, we had to land lumber down there anyhow, a couple sent down to land lumber. There was no use putting them hatch covers on when they don't fit.

Mr. Wood: That's all.

The Witness: And they had to stay on deck to pull up the timbers. They had to stay on deck to pull up the timbers, and they got a place to stand.

Mr. Wood: That's all.

Redirect Examination

Q. (By Mr. Jacobson): I want to ask one or two questions, Mr. McDonald. Is it customary in preparing the ship for grain and lining it to use 2 by 12's to put over across the beams in order to provide a working space or a safe place for a person to work in order to pull up the timbers?

A. Well, we always use hatches. We always use hatches.

Q. That is the customary procedure, is to use the hatches available on the ship?

(Testimony of Norman McDonald.)

A. That's right, yes.

Q. You don't use 2 by 12's running across your strongbacks?

A. No, like I said a few moments ago, at the end of the feeder box, you see, they use false hatches there so we can get them out from under the feeder box so to make it clear for the pan when they pour wheat, on both ends they use false hatches, and in center, why, it is the other hatches. [24]

Q. Well, is it customary to start cutting 2 by 12's to make false hatches automatically in preparing a place for the longshoremen to stand when they are lining the ship?

A. No, it is not.

Q. The fact is that the longshoremen use the hatch covers that are available on a ship to provide a working or a staging area for them to carry on the job?

A. Yes, at all times.

Mr. Wood: I object to that, your Honor. That certainly must vary with the circumstances.

The Court: It has all been covered.

Mr. Jacobson: That is all.

(Witness excused.)

Mr. Jacobson: Call Mr. Olof Hegrenes. [25]

OLOF HEGRENES,

called as a witness in behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Jacobson): You were a member of the crew, longshoreman crew, that was working on

(Testimony of Olof Hegrenes.)

the Stathes J. Yannaghas, a Greek ship located at the Clark & Wilson Dock, in Portland, Oregon?

A. I was.

Q. Were you working there on or about the 12th of December, 1950? A. Yes.

Q. Was Mr. Olaf Strand a member of the gang at the time? A. Yes.

Q. What type of work was your gang supposed to be doing on that ship?

A. Lining for wheat.

Q. That is building a false bulkhead in the lower hold; is that correct?

A. Yes, shifting boards in the middle of the ship.

Q. And in doing so is it necessary to have some of the lumber hauled up by ropes from the 'tween-decks?

A. Yes, you got to pull some of the timber up from the hold, the ship timber.

Q. At the time you were working down there, do you recall the hold No. 4. Would you know where that was located? [26] A. Yes.

Q. Did you check as to the condition of the strongbacks on that hold? A. Yes.

Q. What was the condition?

A. They were bent.

Q. Now were you one of the men that put down some of the hatch covers at the time you went over to hold No. 4?

A. No, I wasn't down in the hold.

Q. When you say that the strongbacks were bent,

(Testimony of Olof Hegrenes.)

what do you mean by that? I mean, in which way were they bent?

A. Well, like, take a straight line. They are bent in the center. You hit them with something, naturally, a straight line will be off. It will bend in the—it won't be straight any more.

Q. What in regards to the top part, was that straight or bent, the flange?

A. On the top deck out on the flange?

Q. Yes. A. They were also bent.

Q. Now is that a normal condition of the strongbacks on ships? A. No.

Q. What effect does the fact that the strongbacks are bent and the flanges are bent have in putting in the hatch covers on top of them into the flanges? [27]

A. The hatch covers won't fit if they are bent. It can't fit because the hold is all alike. It has got the same length, and it can't fit if the strongback is bent.

Q. Now, was that the way you found hold No. 4?

A. Yes.

Q. When you were, you and the rest of the members were working? A. Yes.

Mr. Jacobson: Your witness.

Cross Examination

Q. (By Mr. Wood): Are you the man whose nickname is "Horseshoes"?

A. How?

Q. Is your nickname "Horseshoes"?

A. No.

(Testimony of Olof Hegrenes.)

Q. Just where were you working at the time Mr. Strand fell?

A. On the deck. I was a hatch tender.

Q. On the 'tweendeck? A. No, top deck.

Q. Did you see him fall? A. No.

Q. Then all you knew about it then is the condition of the strongbacks and the hatch covers; is that it? A. That's all I do.

Q. You have seen strongbacks on other ships that were not exactly plumb and true, haven't you?

A. Lots of times.

Q. Don't they in those cases sometimes have to fit special hatch boards to certain places on these beams? A. Sometimes they have to, yes.

Q. Sometimes they even number the hatch boards, don't they?

A. They are numbered, yes.

Q. So that they will be sure to go in exactly the same place on the beams every time; that's why they are numbered; that's right isn't it?

A. Yes, but in this particular case the hatches was all alike. They were all the same length, and when a strongback is bent, naturally, it will not fit.

Q. Well, when you longshoremen find a hatch board that is too long to fit what do you do to remedy that condition?

A. We either have to cut it off, or we have to make a new one.

Q. Do you do that?

A. In some case, in some cases we have to do it

(Testimony of Olof Hegrenes.)

if we—if we want a hatch in there we have to do those things.

Q. If you find a board that is too long to fit do you report that to your walking boss or hatch boss?

A. Oh, we do.

Q. Well then, what is done?

A. He says to make them fit.

Q. What?

A. We got to get them to fit. We got to cut a new hatch board. [29] If we are going to have to fill in that place where it is too long or too short, we got to cut it, work with it, and fit it in if it won't fit in.

Q. Is that what you generally do?

A. In some cases we do.

Q. Well, in what cases do you do it, and in what cases don't you do it?

A. Well, if you want—if we have to work there, if we got to work there and they have to be cut to fill in, we have to do those things.

Q. You have to make them fit?

A. We have to make them fit or else where we got to straighten a strongback.

Q. And you report that to your walking boss, do you? A. I do.

Q. Then the walking boss gets some other hatch from the ship, and you men fit it; is that right?

A. Sometimes, yes.

Q. Well, you didn't work on this hatch yourself, did you? A. I was the hatch tender there.

Q. You were a hatch tender there?

A. Giving signal to the winch driver.

(Testimony of Olof Hegrenes.)

Q. Did you make any report to the walking boss whether the hatches wouldn't fit before the accident?

A. It was not necessary to make any report to that effect because [30] the walking boss saw that the hatches wouldn't fit. He saw it himself. It was not necessary to make that kind of a report.

Q. I see. Well, did you make any protest about working there?

A. We only called them to the attention, what the hatches were too short, and we couldn't make them fit except by making new hatches in there, and we was not directed to do those things.

Q. What I asked you is, did you protest to the walking boss and say, "This is dangerous, we don't want to work here?"

A. I personally did not protest. That's all I can say, personally. I didn't protest none.

Q. You didn't hear anybody protest, either, did you?

A. Not except that they were talking about it, it wasn't safe to work there. I heard that mentioned amongst the men.

Q. Did you hear the walking boss say anything about it? A. I can't recall that.

Q. No. That's all, Mr. Hegrenes.

Redirect Examination

Q. (By Mr. Jacobson): Mr. Hegrenes, in this particular ship were any of the hatch covers numbered? A. No, they wasn't.

Mr. Wood: He said they weren't.

Q. (By Mr. Jacobson): Isn't it a fact that the

(Testimony of Olof Hegrenes.)

hatch covers in this ship, or all Liberty ships have two metal bands on the edges of the boards? [31]

A. That's right, and that makes, steel wires that makes it solid because they are iron against iron, and they slip very easily.

Q. Could you cut those down in order to make them fit into the—between the strongbacks?

Mr. Wood: I object to that question. He said the men could ask for another hatch board to be supplied by the ship, another one to make it fit.

The Court: Ask the question again.

Q. (By Mr. Jacobson): Could the hatch covers that were there be cut in order to make them fit into the hold?

The Court: Answer it.

The Witness: You would have to take the iron band out first before you could cut them.

Mr. Jacobson: That's all.

Recross Examination

Q. (By Mr. Wood): Another way of doing it, Mr. Hegrenes, is if, if you get a hatch board that is too long, is to nail a cross block across the end of it to keep it sliding, from sliding up over the flange; isn't that true?

A. That probably could be done, but customarily is never done.

Q. You have seen it done, haven't you?

A. I have not seen that done.

Q. Well, all right, that's all. [32]

Mr. Jacobson: That's all.

(Witness excused.)

Mr. Jacobson: Call Mr. Steckel. [33]

JAMES R. STECKEL,

a witness called in behalf of the Libelant, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Jacobson): Mr. Steckel, were you the gang boss of the longshore gang that was working on the Stathes Yannaghas, the Greek ship that was berthed at the Clark & Wilson Dock about December 12, 1950? A. I was.

Q. Was Mr. Strand a member of this particular gang? A. He was.

Q. What work were you and this gang required to do on the ship?

A. We were required to make the ship ready for bulk grain and bulk cargo.

Q. That means that you had to build a false bulkhead or lining, what is commonly known as lining ship? A. That's right.

Q. Now, where did you have your crew working, what part of the boat?

A. Well, we started in the morning in No. 3. It was, I am certain, in No. 3. After we got the shifting board in we went back to No. 4, and after we finished the lower hold of No. 3 we went back to No. 4, and when we got to No. 4 hatch all of the strongbacks was off, and immediately I told the gang, "Put the strongbacks in." They proceeded to put the strongbacks in, and when they got into

(Testimony of James R. Steckel.)

the midship hatch, about the middle of the hatch here, [34] went to put the strongback in, it wouldn't fit so we had to juggle three different strongbacks to find the one that should fit, because the strongbacks were bent a certain way that they would not fit, and the ship seemed like it had been squeezed together, the hold been squeezed together, and after they got that fit in, the reason of it was so the men—there was no lumber ready for the hold yet. They were sorting the lumber on the dock and want to cover up the after end of the hold to keep the men busy. I was ordered to instruct them to cover up the after end of the hold so they went ahead and placed it, and by that time there was some of the lumber coming out there, and I had went up on top, and in the meantime Mr. McDonald had went to the lower holds, and when McDonald went down with his partner into the lower holds to land this lumber I never knew it at the time, but as going down after Mr. Strand fell—I might be getting ahead here, your Honor, but I wish to state that there was rungs off the ladder, and as I ran down from the top deck, come down, went to go over to the shaft alley, a rung broke off right in my hand from the ladder down over the shaft alley. That was the reason McDonald and them went below was because this lumber from the lower hold had come out on the dock. They had brought it over there.

Q. Now what type of work did you have Mr. Strand do in the crew?

A. Mr. Strand and Mr. Ramsby, being the last

(Testimony of James R. Steckel.)

two men on the pad, which is customary in lining operations, the last two men on the pad, they do the shelter deck work. What I mean is, when they are [35] working down below they pull up the planks for the shift boards, for the center and the upright.

Q. The shelter deck was the same as this 'tween-decks? A. That's right.

Q. And their job was to pull up some of the boards from the bottom hold and hold it; is that correct? A. That's right.

Q. Until they were nailed on into place?

A. That's right.

Q. What other things did they do with those ropes?

A. Well, they just—with the ropes, that is, pulling up, that was their job there, and then they made the beam fillers, and also had to cut the head shores that fit in to hold the shores that come up in the midship that holds these planks.

Q. Now, in order for them to be able to lift the timbers from the lower hold into position where do they have to be standing?

A. Well, they would have to be standing in the midship, and the reason for the covering of the hold, one of them is safety, to have the ship as secure as you possibly can for the men working, when they are working, and safety is stressed, and, therefore, we always cover the holds up and just leave one out along the center when they are working down below so that when they pull these uprights up, these uprights will extend up there, and there

(Testimony of James R. Steckel.)

is nothing to secure them to so we nailed a 2 by 4 or something across to hold the uprights in place until we get the center line in and the head shores [36] in, and that is our reason, one of the main reasons, too, is to have a secure place to hold your uprights that are put in the fore and aft, on your fore and aft shifting board.

Q. In other words, you have to use, sometimes you use the hatch covers to keep in line the uprights from the holds up to the 'tween-deck?

A. That is right.

Q. And in addition to that it has got—the men have to have a place to stand on in order to lift the timbers up and to hold them in place while the other men down below nail them into position?

A. That is right, the main reason of covering that up, we try to keep it covered up, that's the most a man can do, at the most would be to stick his leg through a hole, at the most, so that he would not fall into the lower hold at any time.

Q. Now, do you recall the condition of the strongbacks that were put in by your men?

A. I definitely do because they had to juggle the three that was in the midship. It would be approximately three they had to juggle, had to juggle them back and forth until they found a correct one that fit there because the ship was just jimmied in. I may further state that the ship was being worked under protest because the Safety Engineer had been called early in the morning, and he had not been around there, and the gang working No. 2 hatch

(Testimony of James R. Steckel.)

was under the same conditions, working definitely under [37] protest.

Q. Will you show the witness those pictures, please? You have before you Libelant's Exhibits 1 to 6 inclusive, and I wish to ask you whether or not those pictures represent the condition of the cross beams on the day of the accident?

A. They do, these here I have seen so far.

Q. Now, you will notice in those pictures there are some false hatch covers. When were those put in?

A. They were put in—I was ordered to have the gang put them in by the walking boss, Charlie Pelletier, to put those in after Strand had fell into the hold.

Q. Well, why were they put in?

A. Because the hatch beams was strung, some of them as much as, I would say six inches, because in the center of some of them if you had took the hatch cover out there to the center the hatch cover would have fell right on down through, and on the other side the hatch cover would be three or four inches hanging up over the top of the beam out in the midship.

Q. Is it customary to put down 2 by 12's in lieu of the hatch boards in order to make a staging place for the men to work?

A. Only in one place that were put down 2 by 12's, and that is where they fasten in uprights in the feeder box, and it is according to the type of feeder box you are building that you place, and if

(Testimony of James R. Steckel.)

you should get a square feeder box in the square of the hatch, then you generally have one section of the hatches [38] in the middle of it and opens on both ends, but it is fit, planked in solid.

Q. Now, what is the usual procedure so far as covering up the hold, are the hatch covers used, or do you use timbers that are available?

A. To cover the hold?

Q. Yes.

A. We always use the hatch covers for the main reason, as I stated, safety to keep the men from falling down below, and also to land our lumber we must have a place to land this lumber that we are to use.

Q. Why don't you use 2 by 12's instead of the hatch covers?

A. Because 2 by 12's would be in the road for one reason, and it would not be safe.

Q. In regards to the flanging itself on these cross beams, were those in good condition on the strongbacks?

A. They were in very bad condition.

Q. In what?

A. They were bent and flanged over and beat down. As the Mate had stated to me on the ship, he said that they had had some heavy cargo in there that had got away from them, and when they took it out the winch drivers was very careless, and it just banged it around.

Q. Are there any pictures that you see there that show some of the flanges bent over? [39]

(Testimony of James R. Steckel.)

A. That is right, here is one that definitely shows a beam that is very badly bent.

Q. There is a number on the back. Will you identify it that way?

A. Exhibit 5 shows a very bad strongback.

Q. Was that the condition that the beam was in at the time of the accident? A. Let me see.

The Court: Who took these pictures? Well, who, you lawyers or——?

Mr. Jacobson: They were taken by the company representing the compensation outfit, and we just took a set of them. We don't know exactly the photographer.

The Court: Well, you didn't take them. You didn't have them taken?

Mr. Jacobson: No, we did not have them taken. A fellow by the name of Butterworth.

The Court: Ask him another question.

The Witness: No. 4 is the exhibit, I would say.

Mr. Jacobson: Your witness.

Cross Examination

Q. (By Mr. Wood): Mr. Steckel, this work was being done by W. J. Jones & Son; isn't that right?

A. That's right.

Q. Do you work for them all the time? [40]

A. I do not.

Q. Now, you were hatch boss for this particular hatch, were you?

A. I was hatch boss for the particular gang.

Q. I see. You said that the ship was being worked under protest; didn't you say that?

(Testimony of James R. Steckel.)

A. That's right.

Q. What did you mean by that?

A. Frank Novak, gang boss of the other gang that was working No. 2 hatch, had called the waterfront Safety man. I can't definitely say his name. I did have a card with his name on. I was looking for it, and I couldn't find it.

The Court: Who chooses the gang boss?

The Witness: The gang boss in our hall is—if you are first up there and down low in earnings and get up close enough to the head of the board and you are lucky enough to get to be the gang boss and the lining job.

Q. In the statement here that we have which you are said to have made but didn't sign—I will show it to you if you like—you say, "We started to work without protest in No. 4."

A. I had not known of—

Q. Right down there. (Indicating).

A. I remember that because I told you.

Q. You didn't tell me. I never saw it.

A. No, but I am telling the truth. That's what I am here to say, is the truth. No. 2 hatch was working under protest all day. [41]

Q. Yes?

A. I went back to No. 4. I had not known of what went on, took place in No. 2 hatch.

Q. Nothing took place in No. 2?

A. No, but I mean, I didn't know what that gang had done up in No. 2.

Q. Yes?

(Testimony of James R. Steckel.)

A. And I come back and was moved into No. 4 hatch, went in there and went to work, and here was these strongbacks, and we were trying to——

Q. Fit the boards in?

A. Yes, fit the hatch covers in. In the meantime, I had left, and when Strand had fell I was just coming back up the gangplank from getting my lumber, and I did not know what the situation was prevailing back there in the after end because I had worked out of the hold. I went down, told the boss. The orders had been handed to me when I come back here was this——

Q. Well, to cut it short, you went to work in No. 4 hatch without any protest?

A. Well, I never knew the conditions of No. 4 hatch to tell how the hatch covers were. A lot of times you may run into a beam you will have to shift around.

Q. When did you discover that these beams were bent in some?

A. Well, you could see them bent before——

Q. No, but when before the accident did you find out? [42]

A. Yes, I found out before that they didn't fit in the middle beam, didn't ever fit.

Q. That's what I say. Then you worked there with that knowledge and without making any protest; that's right, isn't it?

A. Well, I am not the only one to make the protest, you see, I am just a gang boss. The gang can protest, and I have to follow out.

(Testimony of James R. Steckel.)

Q. Well, just as you said a moment ago, what we want is the truth out of this.

A. That's right.

Q. As far as you know, anyway, nobody made any protest about working there in No. 4 until after the accident?

A. Yes, I was out on the dock when McDonald made a protest.

Q. After the accident?

A. No, before the accident. He protested and went to the lower hold.

Q. Oh, yes, he said to the walking boss, "This won't fit," and he went below?

A. Yes, that's right.

Q. That's what you mean by protest?

A. That's right, protested there.

Q. But you made no protest for the gang although you were the gang boss?

A. I have no say—I am to tell them what to do, and if they come to me and say, "Well, that's not safe," then I have to take it up. [43]

Q. Did you have anything to do with procuring the false hatch covers after the accident?

A. For your information——

Q. Everybody's information.

A. And my information. These bulk cargo ships come in here——

Q. Just answer the question. Just answer my question. A. Yes.

Q. Did you have anything to do with getting the false hatch covers?

(Testimony of James R. Steckel.)

A. I was ordered to put in false hatch covers by the walking boss.

Q. I see.

A. But the reason, what they tried to do is conserve as much lumber as they possibly can.

Q. Who does that?

A. There was a Government job, Government contract, and Uncle Sam says so much lumber for the job, and that was that.

Q. Well, was W. J. Jones furnishing the lumber?

A. They were doing the work for the Government.

Q. But the lumber was there when false hatches were needed. They were taken from that lumber, weren't they? A. Yes.

Q. Well, they were?

A. They got the lumber somewhere. I don't know where they got the lumber. [44]

Q. Now in this statement you describe how the accident happened, that Strand was standing on a board trying to pry the board forward into place, and the one on which he was standing then slid, and he fell, but in another part of the statement you say, "I was out on deck so I didn't see it happen."

A. I was told, the report was told to me.

Q. Well then, I won't ask you about that. Now, you said in the earlier part of your testimony that you used hatch boards to cover up on a job like this because you were primarily concerned with the safety of the men working; do you remember saying that? A. That's right.

(Testimony of James R. Steckel.)

Q. So it is your job as hatch boss and the job of the walking boss to see that the place is safe for your men to work, isn't it?

A. That's right.

Q. Well, when, therefore, you saw that the beams were bent and the hatch boards were not fitting, why didn't you or the walking boss do something about getting other boards for doing anything to make the place safe since that was your chief concern?

A. As I explained before, I can't be two or three places at once. I went below, told the men what the score was, what the work was that was lined out, and I went out on the dock to see that they were getting my lumber for me. I had a sheet for so much lumber to get for the holds, certain pieces, and I was telling the fellows that was slinging it what pieces to sling for what side of the ship because we line some on one side and some on the [45] other, on the shaft alley side down there in the lower hold.

Q. Do you mean that you at that time had not appreciated that the place was dangerous to work, is that what you mean?

A. As soon as they had the strongbacks in, and I went down below, on the strongbacks, two boys had started to cover up when I went up the ladder and went out onto the deck and onto the dock to get the lumber because I wanted to get the lumber and get started down below so that they could cover the rest of the hatch up.

Q. I don't think you are trying to answer me.

(Testimony of James R. Steckel.)

I don't think you really listened to my question. Now, you have already told us that your primary concern of you and the walking boss is to make the place safe, hadn't you? That's true, isn't it?

A. It is true on any job.

Q. Yes, and you and the walking boss are responsible for that, aren't you?

A. Well, I would not definite say so because the men just as well can see a lot of things that we can't see.

Q. Well, all right, then the walking boss and the men themselves are responsible for making the place safe to work on? A. That's right.

Q. Now then, apparently you took no steps to try and make it a safe place to work. I am only asking you why you didn't, that's all.

A. In explanation to you, I went out on the dock to get some lumber. [46]

Q. And at that time you had not appreciated that there was any danger, is that right?

A. I couldn't tell you whether them hatch covers are going to fit down there because in a Liberty ship in all of the 'tween decks or shelter decks as you wish to call it the hatch covers, except maybe up on one end next to the ladder, there is a short section in some of them which is definitely so short that you could tell the difference because it is only about half a length, but the rest of them will fit without any trouble at all. They all fit the same place.

Q. Does it come to this, that until after the ac-

(Testimony of James R. Steckel.)

cident you personally had not realized that those were dangerous; is that the substance of it?

A. Well, I was not there so I—at the time I was out on the deck and down on the dock.

Q. What was the walking boss?

A. Charlie Pelletier.

Q. Did you hear Mr. McDonald testify that he protested to Charlie Pelletier, and Charlie Pelletier said, “Well, the boards came out of there. They have got to go back in?”

A. I definitely did not because I was on the dock.

Q. I mean, you heard him testify?

A. That’s right.

Q. But you did not hear the conversation?

A. I did not hear the conversation. [47]

Mr. Wood: That’s all.

Mr. Jacobson: That’s all.

The Court: Don’t put on any more cumulative testimony. Put on your plaintiff now.

Mr. Jacobson: Well, your Honor, this man worked with Mr. Strand on the same job. He actually saw him go down. Call Mr. Ramsby. [48]

LEROY RAMSBY

a witness called in behalf of the Libelant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jacobson): Mr. Ramsby, you and Mr. Strand were members of a gang of longshoremen working on the *Stathes Yannaghas*?

(Testimony of Leroy Ramsby.)

A. Yes.

Q. On December 12, 1950, in Portland, Oregon?

A. Yes, we were.

Q. And will you tell to the Judge what type of work you were required to do and when you first started, and what you did?

A. Lining, it was lining work.

Q. Where did you start to work?

A. No. 3 hold.

Q. Then, what was your job and Mr. Strand's job on the No. 3 hold?

A. In the, in 'tweendecks.

Q. What type of work were you doing there?

A. Well, we lower stuff down like hammers, saws, nails, raise timbers, stuff like that.

Q. And in doing that do you and Mr. Strand provide yourselves a place to stand?

A. Yes, we do.

Q. And what did you use? [49]

A. We used the hatch covers.

Q. In the No. 3 hold? A. Hatch covers.

Q. Did the hatch covers in No. 3 hold, did they fit all right?

A. We never had any trouble in No. 3. Everything was okeh in 3.

Q. You and Mr. Strand actually put all of them in No. 3, made yourself a place to work?

A. Yes, No. 3 was safe.

Q. Then who told you to go up to No. 4?

A. The gang boss.

Q. That is Mr. Steckel? A. Yes, sir.

(Testimony of Leroy Ramsby.)

Q. When you got to No. 4, did the whole gang go up to hold No. 4?

A. Yes, they did, the whole gang.

Q. Do you recall what was done there at the hold No. 4 by the gang?

A. Well, we put the strongbacks in first. We had trouble with a few of them fitting them.

Q. After the strongbacks were put in there were any hatch covers put in by some of the gang?

A. By the gang, yes.

Q. Now, did they put in all of the hatch covers?

A. No, just part of them. [50]

Q. Then what happened to the gang?

A. They went down below to work down below.

Q. And left you and Mr. Strand on the 'tween-deck?

A. Yes, they did.

Q. Now, tell the Judge what you and Mr. Strand did?

A. Well, we covered up the balance until the accident happened, fore and aft of the ship, a row at a time to midships.

Q. Where would you go on your hatch covers?

A. To the forward end.

Q. You would pick up one, and how heavy are those hatch covers?

A. About 50 pounds, or 60.

Q. Are they easily handled by one man?

A. No, one man cannot hardly handle them alone.

Q. Isn't it a fact that they have two handles in some way that two men can handle them?

A. Yes, that's right.

(Testimony of Leroy Ramsby.)

Q. You and Mr. Strand would go to a pile, pick up a hatch cover, and put it down in place?

A. That's right.

Q. What is the customary way of doing that?

A. Fore and aft of the ship, one tier through, and another tier through, and so on.

Q. Well, point out that to the Judge.

A. You start right from you, you see, here is the inshore side, a cover, cover, cover down all the way and back down on fore and [51] aft so, in other words, that makes your footing as you walk along.

Q. Now, can you tell the Judge about where in relation to the hold you and Mr. Strand were working when the accident happened?

A. It was just about direct over the shaft alley. That would be about right here, about four sections over. (Indicating.)

Q. Point out exactly what was being done. How did it occur?

A. Well, a beam was sprung right just where, it was sprung, in other words, right there in the midship about in here, the beam, the flange here, about this, four inch high down here, wavier, bent down pretty bad. We didn't put it right on the bad place. We tried to put it on this side when the accident occurred, when we was prying on that with a 2 by 4.

Q. You took one of the hatch covers, put it down, and found it would not fit; is that correct?

A. Well, they wouldn't fit, naturally, because the whole beam was sprung.

Q. One of them wouldn't fit?

(Testimony of Leroy Ramsby.)

A. That's right.

Q. Now, do you know who went over and got the 2 by 4? A. I couldn't say for sure.

Q. A 2 by 4 was picked up by one of you?

A. Yes, one of us, yes.

Q. Where was Mr. Strand standing in relation to the one you were trying to put in place?

A. I was standing on one side; he was on the other side. Evidently [52] I was standing on the solid one, and he stepped over with one foot on the loose one when he attempted because we were both using the same stick to pry with, but possibly my foot caught it, too, for all I know, but, fortunately, I was on the right-hand side, and I was on something solid, and that curled the loose one up. I guess that's what happened.

Q. Do you recall whether the one he was standing on was one of the hatch covers that you and he put down?

A. No, I don't think we put that one down. I am quite sure we didn't.

Q. Just what happened when he fell? I mean, how quick did that—

A. Well, it happened so fast I really didn't, just saw a flash, and that's all I saw, just zing, just happened so quick, that's all I know.

Q. Do you know whether the hatch cover he was standing on fell with him? A. Yes, it did.

Q. He didn't fall forward over the hatch cover that you and he were trying to pry in?

A. I was concentrating so much on the, on what I was doing, but I really think he fell on the coam-

(Testimony of Leroy Ramsby.)

ing, hit his face in between, as he went down in between the strongbacks.

Q. Why was it necessary for you to try to use a 2 by 4?

A. Well, we was trying to pry a cover in place, a hatch cover. It wasn't so bad there, you see, a wavy part was right here. [53] (Indicating.) We was about this side of it, and we just about had it in place when the back one kicked out.

Q. How far did you have to try to pry the strongbacks in order to fit in this hatch cover you were working on?

A. I couldn't definitely say. That wasn't far from being in place, and when we was prying on it we could just about tell when we was prying, you see.

Q. Do you know whether the flange, vertical part of the flange, was straight or crooked at the place?

A. No, it was wavy. It was like this. (Indicating.) It was "S" shaped right in there.

Q. Well, the waving of your hand does not describe it in the testimony.

A. Oh, I see, pardon me. Here is the flange right here. (Indicating.) You see, it was like this. It was curlicued right in there, the top of it there, see, about half the distance down in the flange. (Indicating.)

Q. Was that the only strongback that was out of line or warped?

A. There were several out of line. The whole ship was out of line, in my opinion. The whole hatch

(Testimony of Leroy Ramsby.)

was caved in or something. There was several out of line but not too bad, and it was a couple strong-backs pretty bad shape. One particularly was bad shaped.

Q. What about the flanges? Were they bent over or vertical?

A. Well, there was some of them wavy, but the worst one, I don't know which, exactly which flange, but one was really bad, the [54] flange, yes.

Q. Now, normally, when you were starting to work on this hold, these hatch covers, they fitted very nicely at first; did they not?

A. Yes, along the coaming they fitted swell, but close to midships when we got out a certain distance where the worst, evidently, like McDonald said, that strain come and buckled the center someplace. It must have been——

Q. How long have you been with the longshoremen, Mr. Ramsby? A. Since 1943.

Q. On these ships, the hatch covers, do they normally fit without any wedging or effort?

A. Yes, they do on these ships. Some ships they don't fit too well.

Q. On this ship here some of them fitted very nicely; is that right?

A. Yes, that's right.

Q. Do you know what was done after Mr. Strand fell in regards to covering up the hatch?

A. Put false hatches on. We was ordered to put those hatches on.

The Court: That is argumentative.

(Testimony of Leroy Ramsby.)

Mr. Jacobson: One more question, your Honor.

Q. (By Mr. Jacobson): Was there anything done in regard to the strongbacks and these flanges?

A. Well, a guy from Willamette Shipyards, I guess he was there. He come down with a torch the next day and a sledge hammer and straightened them out, a repair man.

Mr. Jacobson: Your witness.

Cross Examination

Q. (By Mr. Wood): Mr. Ramsby, is it Ramsby?

A. Ramsby, yes.

Q. Thank you. On this blackboard is supposed to represent the forward starboard corner of the hatch. Do you see that? A. Yes.

Q. Is that where the accident happened?

A. Well, it happened on the forward end or aft just about midships, directly over the shaft alley.

Q. My information was that it happened more in this corner. (Indicating.) A. No.

Q. With the freeboards here and there. It was more here, was it? (Indicating.)

A. It was just midships. Otherwise, when he fell he wouldn't have hit the shaft alley.

Q. He might have been doubled as he went down?

A. I don't think so, maybe one section, something like that, possibly.

Q. Now when you first came there the whole hatch,—the whole [56] 'tweendeck hatch was empty of covers, wasn't it? A. Yes, it was.

Q. And you longshoremen put in the strongbacks? A. Yes, and the covers.

(Testimony of Leroy Ramsby.)

Q. And the covers, and you had some difficulty getting the strongbacks in at first?

A. Yes, we shifted three or four around.

Q. Then after you put them in you put on some of the covers? A. Yes.

Q. Who did that, you and——

A. Well, the whole gang.

Q. The whole gang, and then you and Strand were alone left there?

A. Yes, we were because the other boys went down below to land lumber.

Q. Your intention was to stay there on the 'tweendeck hatch and lift boards up?

A. Yes, we had——

Q. As they were building the bulkhead below?

A. No, they were not building it. They was landing lumber and getting ready to build it, see.

Q. Yes?

A. But we had to cover all of this up with hatch, to leave the center line open to lower tools, in other words, make a place to stand there.

Q. Were you helping Strand pry this board into place? [57]

A. Yes, we was both working together on that.

Q. Did you both have hold of the same lever?

A. Yes, we did.

Q. Were you on the same board? Were you standing on the same board?

A. I couldn't definitely say, but, evidently, we was not because, otherwise, I would have been down there with him, too. I might have been standing par-

(Testimony of Leroy Ramsby.)

tially on it, but it happened so darned quick, you know, I was concentrating on the prying. I couldn't say exactly for sure.

Q. But you were prying on the board that was directly forward of you? A. Yes.

Q. Trying to make it slip down onto the flange?

A. That's right.

Q. Then the board that he was standing on and maybe you were standing partly on it, gave way or fell? A. Yes.

Q. Because it was too long; as I understand it; is that right?

A. I couldn't definitely say it was too long or what, to be truthful about it, but if we thought it was unsafe we probably would not have been on it, but it was something like that, loose someplace, or it wouldn't have fell, I guess.

Q. When did you observe that these beams were sprung?

A. Well, when we came down the hatch and putting the beams in [58] place in the slot, channel thwartship, we noticed it first then, and we noticed it more so after we started putting the covers on.

Q. You had considerable difficulty with the covers from the very beginning, didn't you?

A. Not necessarily, not to start with, but as we worked towards midships we did. It was sprung there, buckled.

Q. That is, as you came nearer to the time of the accident the condition got worse?

(Testimony of Leroy Ramsby.)

A. That's right, it was worse up toward the center.

Q. I have tried to draw a little very crude sketch here of how he was trying to pry that board into place. Does that give you an idea; is that approximately? A. That is something like it, yes.

Q. He was trying to pry the forward board down onto the flange; is that right?

A. Yes, this one here, the forward one, yes.

Q. You were helping him? A. Yes.

Q. I will mark that. I will mark that "Forward" so there won't be any mistake about it. I will offer that in evidence.

(Document, sketch, marked Respondent's 7 for identification.)

Mr. Jacobson: No objection.

Q. (By Mr. Wood): Had you made any protest there against working there before the accident?

A. I was squawking about it or something, but I went ahead [59] anyhow, squawking a little bit about it, but, naturally, you can't tell until you get partially covered up anyhow.

Q. You were squawking about it?

A. Yes, I was kind of squawking and jawing around.

Q. Who were you squawking to?

A. I told the boss, and he said, "Stick them in anyway. Evidently they must go back in," or something, the strongbacks.

Mr. Wood: That is all.

(Testimony of Leroy Ramsby.)

Redirect Examination

Q. (By Mr. Jacobson): Now, you will notice on that sketch that was made by Mr. Wood it shows that as a person standing on a board would be, with the rear portion on top of the plank. Do you notice that? A. Yes, I notice that.

Q. Of the hatch covering. Now at the time of the accident did you, either you or Mr. Strand, know that the board that Mr. Strand was standing on was not actually fitted into the flanges?

A. No, we didn't.

Mr. Wood: Object to that, how does he know whether it was——

Q. (By Mr. Jacobson): Do you know whether or not the board was actually out of place?

A. No, I didn't. Otherwise, I would not be on it.

Q. If that board that Mr. Strand apparently was standing on was on the flanges, would that have come out?

A. If it was down in place [60]

Q. If it had been in place?

A. I don't think so, if it was in place. I don't think so.

Q. Now, if the hatch cover that Mr. Strand was supposed to be standing on, as represented by the exhibit, had fitted down between the strongbacks and on the flanges, even though you and Mr. Strand were prying on another one trying to fit that, would that accident have happened?

Mr. Wood: That is objected to as argumentative.

(Testimony of Leroy Ramsby.)

The Court: Do you want him to decide the case or I? That is all. You don't need to ask him any more questions.

Mr. Jacobson: That is all.

(Witness excused.)

Mr. Jacobson: Call Mr. Olaf Strand. [61]

OLAF N. STRAND,

Libelant, called in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jacobson): Where do you reside, Mr. Strand? A. 4834 N. E. 26th Avenue.

Q. And are you married? A. Yes, I am.

Q. What type of work do you follow?

A. Longshoring.

Q. How long have you been a longshoreman, working as a dock worker?

A. Longshoreman, dock worker, I worked about 40 years.

Q. Is that the type of work you have been doing all your life? A. Practically all the time.

Q. How long have you been doing longshore work itself? A. About 25 years.

Q. Now prior to this accident had you been working steady? A. Yes.

Q. How was your health? A. Pretty good.

Q. How old a man are you?

A. Just past 64.

The Court: 64? [62]

(Testimony of Olaf N. Strand.)

Mr. Jacobson: 64.

Q. You lived here how long in Oregon?

A. Lived here in Portland since 1906.

Q. That has been your home ever since you came from the old country? A. That is right.

Q. How long have you been married?

A. 38 years.

Q. Do you have any children?

A. Yes, I have two.

Q. They are now married and have families of their own, I suppose? A. That's right.

Q. Now, Mr. Strand, you were a member, were you not, of a longshore crew that was sent down to work on the Stathes J. Yannaghas berthed down at the Clark-Wilson Dock in Portland; that is correct?

A. That is correct.

Q. You were working with a crew, a longshore crew, on December 12, 1950, on that boat?

A. Yes, I was.

Q. Now what type of work were you asked to do when you got on the boat, you and the crew?

A. We were supposed to line the ship.

Q. Where did you and the crew first go when you got on the boat? [63]

A. We went to No. 3 hatch.

Q. When you got to No. 3 hatch what type of work did you yourself have to do?

A. I have to stay on the 'tweendeck.

Q. Did you have someone working with you?

A. Yes, I have a man.

(Testimony of Olaf N. Strand.)

Q. Is that customary to have two men working on the 'tweendeck when you line the ship?

A. Yes, it is.

Q. What exactly are your duties on the 'tween-deck when the ship is being lined?

A. First thing to cover up so we have a place to work, a place to walk, stand on.

Q. When you say "cover up", do you have reference to putting the hatch covers down?

A. Hatch covers.

Q. Down on the strongbacks on the hold, in the hold; is that it? A. That's right?

Q. Was Mr. Ramsby your partner in this type of work? A. Yes, he was.

Q. Did you and Mr. Ramsby put down the hatch covers on hold No. 3? A. Yes, we did.

Q. Did you have any difficulties there at all?

A. No, we had no trouble. [64]

Q. Did they slide in there all right on the flanges? A. Yes, they worked all right.

Q. Where did you go after you left hold No. 3, you and the gang go?

A. We were ordered to go to No. 4.

Q. Who ordered you to do that?

A. The boss.

Q. Which one was it, Steckel or Pelletier?

A. Steckel.

Q. When you got to No. 4 hold what condition did you find it in, you and the gang find it in?

A. Well, the strongbacks had to be put in first.

Q. Did you assist in putting those in?

(Testimony of Olaf N. Strand.)

A. Yes, we had along there.

Q. Did they go in very easily in place?

A. Not all of them. We had to turn them around and change them around until we got them to fit.

Q. It took some work to get them fixed though that they would fit? A. Yes, that's right.

Q. Do you know whether or not the hatch covers were put there by you and the rest of the crew at that time after the strongbacks were put in?

A. Yes, the whole crew started to cover up. That means put hatch covers on. [65]

Q. Did they continue to do that?

A. They done that until this, what is his name?

Q. McDonald?

A. McDonald, yes, went down in the hold. Then it was for us to cover up the rest of them because we have to land the lumber.

Q. Who was left on the 'tweendecks besides you and Mr. Ramsby?

A. There was Mr. Horseshoes or Hegrenes is really his name. He is nicknamed Horseshoes.

Q. Did he do any of that work covering up?

A. Yes.

Q. After the other members left what type of work did he start doing on the 'tweendeck?

A. Well, he had to go down the hold then because there was only room for two men on the—you have to work partners. You have to pull up the lumber. That's why we have to be two men.

Q. Well, do you know about how heavy these

(Testimony of Olaf N. Strand.)

hatch covers are up around this ship, the Yan-naghas?

A. I couldn't say exactly, but I judged around between 60 to 70 pounds.

Q. They are too heavy for one man to handle?

A. Yes, they are too heavy for one man to handle.

Q. Because of the weight or because of the size?

A. Both.

Q. Then you and Mr. Ramsby were left the job of putting on the balance of the hatch covers; is that correct? [66]

A. That is correct.

Q. Then what did you do? Tell the Court exactly how you proceeded about the job there.

A. Well, we started to put on along the hatch coaming, first one and then another one, and we put down a whole tier. Then we start on the next tier.

Q. Did you have any difficulty when you first started?

A. We didn't seem to have any difficulty closing the hatch coaming until we got further out on the hatch.

Q. Where did you get these hatch covers? Where were they?

A. They were forward on the 'tweendeck.

Q. Were they all on a pile?

A. They were, yes, they were all on the pile.

Q. You would pick one up, bring it over to the hold, put it down in place?

A. That's right.

Q. And the customary way of putting those down is to put one down, then take another one, put that

(Testimony of Olaf N. Strand.)

other down before stepping on the one that you had put down?

A. Yes, we put it right on the end of the one we had put down to finish the tier, yes.

Q. You stepped on the one that you put down, and you put another one down, and you stepped on the second one when you put the third one down; is that correct? A. Yes, that's right. [67]

Q. Will you point out, if you can, approximately where you were in putting down these various hatch covers in relation to the hold when you found yourself with the hatch cover that wouldn't fit?

A. We were very close to the middle of the ship, of the bulkhead.

Q. Very close to the middle of the hold?

A. Yes.

Q. You don't recall the exact location, do you?

A. I can't recall that exactly, the tier we put in there, but it was very close to the middle.

Q. Now, what happened when you have got a hatch cover that wouldn't fit into the flanges, between the flanges of the strongbacks? Tell the Court what you did.

A. Well, we went to get a 2 by 4 to pry it because it was so little, that part of the strongback that we could get this to go in.

Q. The others went in very easily. How come that this did not go in?

A. Well, the flange on the strongback was bent.

Q. Was there anything else the matter with the strongback there?

(Testimony of Olaf N. Strand.)

A. Yes, the strongback was bent itself.

Q. Is that the normal way these strongbacks are supposed to be on these ships?

A. No, they are supposed to be straight.

Q. Now do you recall who went after the 2 by 4?

A. I can't recall. It was one of us.

Q. Tell the Court exactly what you did in relation to that hatch cover that was not able to fit. What did you try to do?

A. We tried to put a 2 by 4 in between the hatch cover and the strongback so we could pry a little bit so the strongback would give a little bit so the hatch would go down.

Q. Now when you were doing that did you step on the hatch cover—where were you standing in there? A. I was standing on another hatch.

Q. Was that in back of the hatch cover you were trying to put in place? A. Yes.

Q. Do you know whether or not you or Mr. Ramsby put that particular hatch cover that you were standing on down? A. No.

Q. Did you put it down yourself?

A. No, I didn't. Lots of the others put down hatch covers there.

Q. Was that one of the hatch covers that were put down there by the gang? A. Yes.

Q. Did you notice whether or not the hatch cover was partly in the flange and the back of it was on top of the flange? A. I didn't notice.

Q. Did you yourself try to pry that front hatch cover into place?

(Testimony of Olaf N. Strand.)

A. Yes, we tried to pry it in. [69]

Q. Was it you yourself, or was Mr. Ramsby helping you? A. We both worked on it.

Q. What happened?

A. Well then, the hatch slipped out from my feet, and I went down, and that's all I remember.

Q. Do you recall what you hit? A. No.

Q. When you landed down in the hold were you conscious? A. No.

Q. When did you first know what happened to you?

A. I first come to when I was on the dock laying in the stretcher.

Q. Now where were you; do you know where you were taken from the dock?

A. Yes, I was taken to St. Vincent's Hospital.

Q. How long were you at the hospital; how long were you there? A. About three weeks.

Q. Who was your doctor attending you at that time? A. Dr. Howard Cherry.

Q. Can you tell me what injuries you sustained as a result of this fall? A. I don't know——?

Q. What damage did you get as a result of the falling down into the hold, on your body?

A. I hurt my back.

Q. Is that the only thing that happened to you?

A. Well, I cut my lip practically in two, and my eye was just about closed up when I come to the hospital.

Q. Did you have anything the matter with your mouth? A. Yes, I have.

(Testimony of Olaf N. Strand.)

Q. How is that? A. Yes, I have.

Q. What was the matter with your mouth at the time of the accident? A. Well, the lip was cut.

Q. How about the inside of your mouth?

A. The inside had to be sewed.

Q. It was cut?

A. Yes, it was cut right across; it was tore.

Q. What about your teeth?

A. It was tore off, tore.

Q. What about your teeth?

A. Tore out, the pair was tore out.

Q. Are those false teeth that you have?

A. Yes, I have a plate.

Q. And those plates have been repaired; is that correct? A. Yes, they was repaired again.

Q. What about your side? Did you get any injuries on your arm or the side of your body?

A. Well, I had a blue spot on the hip on the left side.

Q. Anything with your arms? [71]

A. Yes, couple of cuts on the arms, pretty deep.

Q. Now you referred to the fact that you had a bruise on the arm. Is your leg bothering you now?

A. My left leg is bothering me, yes.

Q. What is the matter with it?

A. It seems I don't have any strength in it. It is weak. It takes the knee a little bit.

Q. What about your back? What is the matter with your back?

A. Oh, the back seems like I haven't got no strength to pick up anything. It is stiff.

(Testimony of Olaf N. Strand.)

Q. Have you been ordered to wear any appliance on your back?

A. Yes, I wear a brace all the time.

Q. Now what about your lip? You say it was cut? Now, have you got a scar on it now?

A. No, I haven't got control over it.

Q. Well, I say, have you got a scar?

A. Yes, I got a scar.

Q. Turn around and let the Judge see it.

A. It shows, I guess.

Q. Now what about the lip? How does it feel when you are eating?

A. Seems like I haven't got no control over it. I got to watch myself when I eat so that the food don't slip out. It's hard, you know.

Q. Was that lip sewed up?

A. Yes, it was sewed up. [72]

Q. Do you know how many stitches they took on that? A. No, I couldn't say.

Q. How have you felt? How has your nervous condition been?

A. Well, it makes me a little nervous at times.

The Court: Does he work?

Q. (By Mr. Jacobson): Have you been working since the accident? A. No, I haven't.

The Court: Have you tried to?

The Witness: The doctor ordered me about a month ago to try, but I didn't feel, I didn't, I didn't feel I had the strength.

Q. (By Mr. Jacobson): The doctor talked to you about a month ago to try to go to work; is that right? A. Yes, that is right.

(Testimony of Olaf N. Strand.)

The Court: What kind of work did the doctor suggest you try, longshoreman?

The Witness: Longshoreman.

Q. (By Mr. Jacobson): Have you been having any nosebleeds?

A. Yes, I have lots of nosebleeds on this side where I was hurt. I also hurt, in fact, I still got a lump there on the nose from the blow when I struck and went down.

Q. Did you have much pain at the time you were brought into the hospital? A. Oh, yes.

Q. Now what did they do to you up at the hospital?

A. Well, they didn't do nothing else than they sewed up my lip [73] first night and put to bed because the doctor said I wasn't in condition to be moved too much so he put me to bed. He put a board underneath the mattress so I was going to lay straight.

Q. You were lying on a board under the mattress? A. Yes.

Q. Do you know whether they took any pictures of you? A. Took pictures the next day.

Q. Did they put any stitches in your mouth?

A. Yes, they put that in the first night when I come up to the hospital.

Q. Now how did you feel at the time you were in the hospital lying on that board?

A. Well, I couldn't move. I had to lay there. I had to be fed like a baby. I couldn't do nothing except I laid there, that's all.

Q. Did you have any pain? A. Yes.

(Testimony of Olaf N. Strand.)

The Court: Does he have pain now?

The Witness: Yes, I have pain. Yes, I have pain in my back. My back is sore, you know.

Q. (By Mr. Jacobson): What about your leg? Have you any pain in your leg when you are walking?

A. Yes, it catch me every now and then when I walk, set right in, one leg to the, to another.

The Court: How was his leg hurt? [74]

Mr. Jacobson: He hit the shaft alley, apparently. I don't know, but he must have.

The Court: Where was he hurt on his leg?

Q. (By Mr. Jacobson): Where were you hurt, what part of the body in relation to the leg?

A. Mostly on the hip, on this (indicating).

Q. Is that the left leg? A. Left leg, yes.

The Court: Does he have trouble walking now?

The Witness: Yes, I have trouble walking now, yes, I limp, and before I know it it kind of comes over all at once.

Q. (By Mr. Jacobson): Have you tried to do some work, say, around the house?

A. I have done a little bit, just a little bit around the yard, and that's all.

Q. Now have you tried to bend over and do some light work, bending over to pick up grass, anything like that?

A. Well, I have tried to be very careful because I simply get awful headaches when I do bend over.

Q. But you have tried to do that type of work?

A. I have tried, yes.

(Testimony of Olaf N. Strand.)

The Court: What is this about headaches? What did you say about headaches?

Q. (By Mr. Jacobson): Do you have any headaches?

A. I used to have lots of headaches. [75]

Q. Did you have them before this accident?

A. How is that?

Q. Did you have them before this accident?

A. No.

The Court: He spoke of his eyes. Has his vision been affected?

Q. (By Mr. Jacobson): How about your eyes, are they any different now than they were before the accident?

A. No, I don't know, I couldn't tell. I haven't asked the doctor. I can see all right.

Q. You haven't any difficulty seeing now? Do you have any difficulty in seeing with your eyes now?

A. I have to use glasses when I read, of course.

The Court: Let Mr. Wood cross examine, and you can take up anything you have forgotten. Cross examine, Mr. Wood.

Cross Examination

Q. (By Mr. Wood): Mr. Strand, you said you have not done any work since the accident, and that leaves me to think of how you support yourself. Are you receiving compensation?

A. No, I ain't.

Q. From the insurance carrier? A. No.

Q. As a stevedore?

(Testimony of Olaf N. Strand.)

A. I don't receive anything. [76]

Q. How? A. I haven't received anything.

Q. I want to get clear in my mind, where you start to cover up that hatching. May I go up there to the blackboard? Now on this blackboard, which I believe your lawyer drew, this represents the hatch. This is forward? A. Yes.

Q. That is aft? (Indicating.)

A. That's right.

Q. This is the 'tweendeck hatch. Now I will rub these out because I drew those myself. Now as I understand your testimony, part of your gang, or maybe all of it, after you put the strongbacks in place began to cover up the hatch?

A. That's right.

Q. That's right. Now how many men worked at that in the beginning? In other words, there was more than just you and Ramsby, wasn't there?

A. Yes, that is seven me.

Q. They began to do the covering up, did they?

A. Yes.

Q. What part of your hatch did they begin on?

A. They started along the coaming first. They have to.

Q. Now forward or aft?

A. Well, it's forward; the hatches is forward.

Q. In other words, the gang began to cover up the forward end? [77] A. Yes.

Q. It is customary—I think I know—to cover a tier at a time, usually, isn't it? A. Yes.

Q. No?

(Testimony of Olaf N. Strand.)

A. It is customary to cover this way. (indicating.)

Q. This way, fore and aft?

A. Fore and aft.

Q. Is that what you did? A. Yes.

Q. Was that done on this occasion?

A. Yes.

Q. All right.

The Court: Put an arrow to show the way they worked.

Mr. Wood: Yes, I will.

Q. Where did they begin, forward or aft?

A. They would begin forward.

Q. They would begin forward, and they worked that way, in that direction? (Indicating.)

A. That's right.

Q. Now what was the condition of the hatch? I mean, how much of it had been covered?

A. There hadn't been any covered when we come down.

Q. When you first began, I know.

A. Yes. [78]

Q. But when you and Ramsby were left there alone how much of the hatch was covered?

A. Oh, I will say——

Q. (Interrupting): Which part? I am going to draw it as you tell me.

A. Well, they were covered. There was some laid here on both sides.

Q. You had begun here? (Indicating on black-board.) A. Yes.

(Testimony of Olaf N. Strand.)

Q. That was covered, and this was covered, the second tier? A. Yes, that's right.

Q. And the third tier? A. Yes.

Q. All the way back?

A. All the way back.

Q. Clear back the whole length of the hatch?

A. Yes.

The Court: That is what he calls coaming?

Q. (By Mr. Wood): This is a coaming, is it not, all the way around? A. That's right.

Q. I mean, the outside edge of the hatch is the coaming?

A. That's the coaming, boards and the coaming.

Q. It is fitted with a flange on which the boards rest; is it not? [79] A. No.

Q. The forward and aft has to have a flange on it?

A. Yes, the fore and aft, but not a coaming.

Q. The fore and aft has a flange to lock the flange on the strongbacks? A. That's right.

Q. Now I just want you to tell me to draw as much as you covered here when you and Ramsby took charge and worked alone. Go ahead. Shall I draw on the board here? A. Yes.

Q. All the way back? A. Yes.

The Court: How wide are they?

Q. (By Mr. Wood): They are about two feet wide, aren't they?

A. Well, they are something like that.

Q. 18 inches, two feet wide. I thought they were usually two 12 inch boards fastened together with

(Testimony of Olaf N. Strand.)

that band. A. Wider than that.

Q. It would be about two feet wide?

A. Well, I would say three.

Q. Three feet wide, all right. Well now, shall I draw another line on this?

A. Yes, you can do that.

Q. I mean, before you and Ramsby were left alone was another line of covers laid down by the whole gang? [80]

A. Yes.

Q. All right, and still another? A. Yes.

Q. I want to get the condition of the hatch when you and Ramsby were there alone.

A. Well, that is close to the middle of the board.

Q. All right, I will draw another. (Draws on blackboard.) Something like that?

A. Something like that.

The Court: How far across, half way?

Q. (By Mr. Wood): Well, nearly half way across the hatch? A. Yes, sir.

Q. Your intention was to leave an open space in here, wasn't it? (Indicating.)

A. In the middle, yes.

Q. Which you could raise and lower boards?

A. Yes.

Q. Now all this covering up had been done by you and Ramsby and two or three other longshoremen; is that right?

A. Seven of us altogether when we started in.

Q. All right then, why did the other men leave and leave you two alone?

A. For one reason, they have to land lumber on

(Testimony of Olaf N. Strand.)

the load. There have to be somebody down there.

Q. Was there any other reason? [81]

A. And the other reason is that this man have to fasten, the hatches didn't fit in.

Q. Who is that, McDonald?

A. McDonald, yes.

Q. In other words, he refused to work there any more?

A. Yes, he went down below.

Q. Did you hear that protest? A. Yes.

Q. Did you hear the walking boss say, "Well, the boards came out of there. They must go back in again?"

A. That's what he said, yes.

Q. So you remained there and worked?

A. Yes.

Q. Your answer is "Yes"?

A. Got orders to stay there, yes.

Q. Well, did you think that McDonald's protest was right?

A. I think so.

Q. I mean, at that time did you think so?

A. Yes.

Q. That there was something wrong with the hatch?

A. There was something wrong with the beams.

Q. You didn't think they were safe?

A. No.

Q. You didn't think so, did you?

A. I didn't think they were safe. [82]

Q. No. Now, why didn't you do as McDonald did and go some place else?

A. There was no other place but to go through there.

(Testimony of Olaf N. Strand.)

Q. Now this is known as the No. 1 tier, isn't it, the forward tier? They are numbered 1, 2, 3, 4? Don't they call them like that?

A. They are supposed to be.

Q. Well, we will call those for the purpose of showing up what we are talking about. We will call the forward tier No. 1, the next one to it No. 2. Now were you standing on a board in No. 2 tier when you fell?

A. I can't recall that. I think it was further in the middle than that.

Q. Well——

A. Something like that, 3.

The Court: How did they face as they worked?

Mr. Wood: The men, you mean?

The Court: Yes, like you are facing?

Q. (By Mr. Wood): Now at the time of the accident you were standing, I believe, like this, prying forward, weren't you?

The Court: Yes, well, I mean, did they face fore and aft?

The Witness: Faced fore and aft, your Honor.

Q. (By Mr. Wood): But you were facing forward at the time you were prying. In other words, there was a board here in, we will say, No. 2 tier, which was too long to fit even, wasn't it, and [83] that board you were trying to pry into place, and in so doing, why, you stood on the board, next board to it, didn't you? A. Yes.

Q. Did you look at all to see whether that board you were standing on was fitting on the flanges?

(Testimony of Olaf N. Strand.)

A. No, I didn't notice.

Q. You did not look, did you?

A. Well, we couldn't work it over; that is all. I figured it was safe.

Q. What do you think made the board fall?

A. I couldn't say. It seemed to be under my feet.

Q. What explanation can you make of it now?

A. The only way I can say is it must have been up on one end.

Q. That is what I think, too.

A. If it was right in between, I don't see how it could go out.

Q. No. It probably was up on the after end. If it had been up on the forward end, you would have seen it. In fact, if it had been up on the forward end, you couldn't have pried against it, could you? Is that right? A. No.

Q. I would like to show you just a little rough sketch—I am not much of a draftsman.

The Court: Don't let him mislead you. He is an artist. He is a good drawer. [84]

Q. (By Mr. Wood): Is that about the way it was? You don't know whether it was up on one end or not?

A. That looks something like it, yes. Prying the hatch here (indicating)——

Q. If this forward end of this board had been up over the vertical flange, you would have seen it, wouldn't you?

A. Couldn't help it; you had to see it.

(Testimony of Olaf N. Strand.)

Q. So, if the board gave way, it looks as if it must have been the after end that was too high up, is that right? A. Yes, sir, the way it looks.

The Court: Too high up, why?

A. If the hatch is put in, one end would be on top of the flange.

Q. (By Mr. Wood): Anyway, you did not look to see what condition it was in? A. No.

Q. You not only did not notice it; you did not look to see what condition it was in before you stepped?

A. You look practically every step you take when you work in that line of work, because you have to, because it is too dangerous.

Q. But you did not look to see how this board was, did you? A. I didn't notice that.

Q. If you had noticed it, what would you have done? A. I wouldn't have stepped on it. [85]

Q. Had you had trouble putting in the other hatch covers before this one, or had they gone in nicely? A. Not always, on different ships.

Q. No. I mean on this ship, on this hatch.

A. No, in No. 3 they went in all right.

Q. How about on No. 4, the one we are talking about?

A. They went in all right until we got up there on this particular hatch, and then it was too long.

Q. This particular one?

A. But we were going to try it, anyway.

Q. Before that you had had no trouble?

A. No, we got them in there.

(Testimony of Olaf N. Strand.)

Q. Although you had seen these beams were bent, nevertheless they went in all right, did they?

A. Yes.

Mr. Wood: That is all.

Redirect Examination

Q. (By Mr. Jacobson): At the time of the accident how much were you earning on an average a month? A. At the time of the accident?

Q. Yes, how much a month?

A. Around \$400 a month.

Q. What were your average earnings during the year 1950 up to [86] the time of the accident?

A. You mean earnings for the whole 1950?

Q. Yes, average earnings for each month?

The Court: He said \$400.

Mr. Jacobson: At that time; I mean for the whole year.

The Court: He meant an average of \$400 a month.

Q. (By Mr. Jacobson): For the year 1950?

A. Yes, I think I did; yes.

Q. Did you do any other work besides longshoring sometimes?

A. Yes, I worked—used to go to Alaska.

Q. When did you go to Alaska?

A. I went to Alaska in 1948.

Q. What time of the year would you be going?

A. Generally left—it would be around June.

Q. And you would be gone for how long?

A. About five weeks, between five and six weeks.

Q. What would you be doing up there?

(Testimony of Olaf N. Strand.)

A. Fishing.

Q. What type of earnings would you earn on that type of work?

A. It all depends on the season.

Q. Let the Court know your approximately earnings for 1948. A. About \$2,000.

Q. For five weeks? A. Five weeks, yes.

Q. Did you contemplate going to Alaska, prior to the accident, [87] in the year 1950 or 1951?

A. I couldn't go this year. I had a chance to go, but I couldn't go. I couldn't take a chance.

Q. Do you feel you can go back to longshoring in your present condition?

A. I am afraid not.

Q. Why not?

A. Well, for the simple reason I don't think— couldn't lift anything, any weight.

Q. You have to lift heavy weights in longshoring? A. Yes.

The Court: Q. What other kind of work can you do, do you think, if you can't go back to longshoring?

A. I wouldn't know what kind of work I could do.

Q. What other kind have you ever done in times past?

A. That is all. I have been working on the Portland waterfront.

Q. Twenty-five years? A. Yes.

Mr. Jacobson: That will be all.

(Testimony of Olaf N. Strand.)

Recross Examination

Q. (By Mr. Wood): Do you think the board was too long or too short?

A. Couldn't exactly say. All I know, it slipped out.

Mr. Wood: That is all. [88]

Mr. Jacobson: That is all.

(Witness excused.)

Mr. Jacobson: Does your Honor wish to continue?

The Court: Do you have other witnesses?

Mr. Jacobson: One more witness, Mr. Strand's wife.

The Court: What do you want her for?

Mr. Jacobson: And the doctor. We told the doctor we would have him at 1:30 this afternoon.

The Court: You had better consult me about these dates you make with doctors. I am just as busy as they are.

Mr. Jacobson: I did not realize your Honor wanted to go through the noon hour.

The Court: How many witnesses do you have, Mr. Wood?

Mr. Wood: Two, your Honor. We have a deposition and possibly a doctor, depending on what their doctor says.

The Court: Bring me the deposition. I will read it during the noon hour.

(Court thereupon recessed until 1:30 o'clock p.m.) [89]

Court reconvened at 1:30 o'clock p.m. June 15, 1951, pursuant to recess.

DR. HOWARD L. CHERRY

was produced as a witness on behalf of Libelant and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Jacobson): Dr. Cherry, you are a physician and surgeon authorized—

Mr. Wood: We will admit his qualifications.

Mr. Jacobson: Does your Honor wish to know the Doctor's qualifications?

The Court: He looks all right to me.

Mr. Jacobson: Q. How long have you been practicing medicine, Doctor?

A. I graduated in 1943.

Q. Are you specializing in any branch of medicine?

A. Yes, sir.

Q. What is the branch you are specializing in?

A. Orthopedic surgery.

Q. Do you know Mr. Strand here?

A. Yes.

Q. Where did you first meet Mr. Strand?

A. I first saw him at St. Vincent's Hospital immediately after an injury. [90]

Q. Do you recall when you saw him?

A. It was December 12, 1950.

Q. Did you examine him at that time?

A. I did.

Q. Did you take any X-rays?

A. He had X-rays the next day, as I recall.

(Testimony of Dr. Howard L. Cherry.)

Q. What condition did you find him in the first time you went to the hospital?

A. I saw this man in the emergency room. He had severe lacerations to the mouth and had severe, apparently severe, pain in his back.

Q. Did you prescribe anything for him to relieve his pain?

A. Yes, he was given a hypodermic.

Q. What about the type of bed he was placed on, do you recall? A. I can't say for sure.

Q. Have you any findings in regard to the examination you made of him at the time of the first examination and subsequent to the time you saw him in the hospital?

A. Yes. When I first saw him the most obvious things were these lacerations. His lower lip was split completely through and about a third or half of it was hanging off. Also, his dental plate had been broken and it had cut his upper gums; lacerations about an inch long, and there was a third laceration about an inch long on his chin. These were repaired very soon after he came to the hospital. [91]

Then his other injury was in regard to his back. He was very sore and tender and in practically a spasm at the time I saw him.

Q. Any lacerations on the roof of his mouth?

A. In the region of his gum, the upper gum.

Q. Did you find any bruises or contusions on the left side of his body or left arm?

A. I don't recall whether I did or not.

(Testimony of Dr. Howard L. Cherry.)

Q. You have been his attending physician ever since the accident; is that correct?

A. I have, yes.

Q. How long did you have him in the hospital?

A. He was in the hospital from December 12th until December 30th, 1950.

Q. What treatment did you prescribe for him after he left the hospital, Doctor?

A. He was given physiotherapy from Dr. Arthur Jones' laboratory, and he was given a reinforcing brace for his back.

Q. Is it necessary, in your opinion, that he wear a brace for his back at the present time?

A. Yes. To the best of my knowledge, he is wearing it.

Q. When is the last time, or when was the last time you examined him?

A. I examined him on June 11, 1951.

Q. Before we get to that examination, you did take X-rays of [92] Mr. Strand, is that correct?

A. Yes.

Q. What did they reveal to you, Doctor?

A. The main findings at the time of his injury—there were no fractures, no bony injuries that we could detect at the time of his injury. He had, however, a marked narrowing of the lumbosacral joint with sclerosis and an irritation apparent at the lumbosacral joint.

Q. What did you find at this last examination? What condition did you find him in at that time?

A. On the last examination his back was still

(Testimony of Dr. Howard L. Cherry.)

sore. He has limitation of motion in his back so he is unable to reach normal range; he still has back spasms and is tender. His lip is healed, but there is considerable scar tissue in this region.

The Court: Q. What is the type of back spasm that he has now?

A. It is due to chronic back strain.

The Court: Q. Does his history show he had it before?

A. I don't know of any trouble with his back.

The Court: Q. When you say "chronic" you mean you regard it as chronic now?

A. After this length of time I would, yes.

Mr. Jacobson: Q. Has he made any complaint to you about his left leg? Has he made any complaint to you about his left leg bothering him? [93]

A. Yes. He is complaining of pain in the leg and especially centered around the knee.

Q. What are your findings in regard to this complaint?

A. His knee was X-rayed and no changes were noted. It is my feeling that the pain he has in his left lower extremity is due to his back injury. The nerves to the extremity merge at the level of his back where it was hurt and that is a common cause of pain in the leg.

Q. Will his present back condition be permanent, in your opinion?

A. I think there is great likelihood that he will continue to have disability in his back.

Q. In your opinion will he be able to follow the

(Testimony of Dr. Howard L. Cherry.)

line of work that he did prior to the accident?

A. I don't believe he will be able to do heavy manual labor.

Q. Would Mr. Strand require continuous treatment to his back in order to be relieved of any pain or suffering?

A. I doubt that he will need prolonged treatment. I think primarily he will have to stay within the limits of what his back will stand.

Q. Do you think there is anything that can be done for him at the present time in order to relieve that condition? A. I think not.

The Court: Q. He testified about headaches that he says he still has. Do you know anything about that?

A. I have not treated him for headaches. [94]

Mr. Jacobson: Q. Has he complained to you about the fact that he has some nosebleeds when he bends over?

A. I was unaware that he had nosebleeds.

Mr. Jacobson: That is all.

Cross Examination

Q. (By Mr. Wood): Did this man come to you because your office does work for Jones Stevedore Compensation Carrier?

A. Our group does do work for the Jones group, yes.

Q. And it was in that capacity you were attending this man? A. Yes.

Q. Any medical bills of yours would be paid by Jones or by its insurance carrier, wouldn't they?

(Testimony of Dr. Howard L. Cherry.)

A. Either that—they are paid by the insurance carrier normally, yes.

Q. I presume you know Dr. Theodore Pasquesi?

A. I do.

Q. We had Dr. Pasquesi examine this gentleman in January. I have a two-page report here. I will be glad to show it to you. The substance of the report is that he could not find any fractures as you have said, but he did find some moderate arthritic lipping, and he thought the man would be able to resume work in about three months from January. Do you differ with that opinion? [95]

A. In January, I agreed with him.

Q. Did you and Dr. Pasquesi consult about the matter?

A. No, I was unaware Dr. Pasquesi—what I mean by that is that in January I thought he would be able to work in three months. I was unaware that Dr. Pasquesi had seen this man.

Q. What has changed your opinion, if it has changed?

A. My opinion has changed in that he has not made as good a recovery as I thought he would attain.

Q. How do you tell that? You cannot tell that from any X-rays or objective finding, can you?

A. You can't tell it by X-rays, that is correct. You can by examining him and finding tenderness, spasms and lack of motion.

The Court: Q. His age is a factor. He said he is sixty-four.

(Testimony of Dr. Howard L. Cherry.)

A. His age is a factor, certainly.

Mr. Wood: Q. You said that his back is in more or less a chronic condition. Do you know whether that is due to the accident or to conditions existing either before or possibly his advanced age?

A. Could I have those questions one at a time, please?

Q. Can you attribute this chronic condition to the accident?

A. The accident brought about the acute stage which has gone into a chronic back strain. The accident did not cause the changes shown in the X-rays. Those were there previously, but to the best of my knowledge he did not have trouble with his [96] back before and he was able to perform rather hard work, and since his accident he has had constant trouble and it has become chronic. By chronic I mean of long standing, and it has not changed very much. I feel the accident did contribute to his chronic back pain.

Q. Aggravated it, is that what you mean?

A. If he did not have the pain before, I can hardly use the word "aggravated" for his pain now. It aggravated the changes that are shown by the X-rays.

Q. You do not mean that this man is incapacitated from doing such work as would enable him to earn his living, do you?

A. I hardly think that this man will be able to return to longshoring, to earn a living in the usual occupation of longshoreman, the usual occupation that longshoremen pursue.

(Testimony of Dr. Howard L. Cherry.)

Q. I don't know how familiar you are with longshoring. You are a comparatively young man, compared to me, anyway. Do you know that there are a good many jobs in connection with longshoring, for example, hatch tender, hatch boss, winch driver, and so forth, which do not require any particular physical labor?

A. That is why I said that this man could not return to hard labor. He might be able to perform lighter jobs.

Q. Are you familiar sufficiently with longshore work to know that these jobs I mentioned, like that of hatch tender, which is merely giving signals, and hatch boss, which is bossing the [97] gang, and winch driver which is merely moving levers—are you familiar with the fact that those do not require hard labor? A. Pardon?

Q. Are you familiar yourself with the fact that those particular jobs do not require any hard labor?

A. I know that. I have become aware of that.

Q. If there is no fracture, no compression fracture—as far as I can make out, there is nothing but arthritis. Maybe I am wrong—to what do you attribute this pain that you now assign to the accident?

A. It is a condition which I term a low back sprain. It is certainly contributed by his arthritis, and since he had previously, as he said, a normal amount of motion and he has had a tearing of the ligaments——

Q. He has had what?

(Testimony of Dr. Howard L. Cherry.)

A. A tearing of ligaments; probably a tearing of muscle fibers in that region; and any person that has had that type of back he has, some get well, some keep going.

Q. I think we all know and agree that Nature is a great repairer, isn't she? That is true, isn't it?

A. In cases, yes.

Q. Don't you think Nature will continue to work an improvement in this man?

A. A man sixty-four years old, with marked loss of space in that joint, if he sticks to hard labor I would expect him to [98] continue to have a sore back.

Q. You are not very encouraging to me, I am afraid.

A. You are not doing longshoring.

Mr. Wood: That is all I have, your Honor. Instead of calling Dr. Pasquesi, I would like to offer this report in evidence which really does not differ from what Dr. Cherry says his opinion was last January.

Redirect Examination

Q. (By Mr. Jacobson): Irrespective of the fact you were paid the cost of your services, what is the reasonable value of your services and of the X-rays, for the record?

A. Our services run \$200 for treatment performed and \$30 for X-rays.

Mr. Jacobson: That is all. Thank you.

(Witness excused.)

Portland, Oregon, June 19, 1951, a.m.

Court reconvened in the above-entitled cause, pursuant to adjournment.

DR. THEODORE J. PASQUESI

was thereupon produced as a witness on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Wood): Dr. Pasquesi, did you examine Mr. Strand? A. Yes.

Q. You examined Mr. Strand, I believe, last January, and made a report? A. Yes, I did.

Q. That report has been introduced in evidence here so we do not need to go over that. The substance of it was that you found him disabled at that time to the extent of about three months. That was your conclusion? A. That is right.

Q. Since that time, at my request you have examined him again, have you? A. I did.

Q. Just the other day?

A. I examined him last Friday.

Q. Will you please tell the Court what you found his condition [100] to be? Just tell the Court rather than the attorneys. The Court is the one that is interested.

A. Yes. Mr. Strand was examined last Friday afternoon, and it was noted that he was not so active this time as he was on the previous occasion in January, January 26th. He said his troubles at this time were that his back was weak, that he had pain in his back when he reached down to pick up ob-

(Testimony of Dr. Theodore J. Pasquesi.)

jects from the floor, and that he did not seem to have much strength. He said when he was stooping over he complained of getting headaches and being dizzy, as well as his back causing him pain. He further stated at that time that when he was out for a walk he would walk a block or two and he would have to stop and would get cramps in his leg and that he had to stop and start again. They would be relieved after stopping for a short time.

He also complained at that time that he still had some pain in the region of his left knee. He said that these pains in his leg and these cramping leg pains had come about mostly in the past month.

When we stripped the man for examination it was found he wore an orthopedic belt which he said he had been wearing for about a month. He said he had been doing some work around his yard and that he stiffened up considerably and had headaches.

The Court: Did he say anything about nose-bleed? [101]

A. He hadn't said anything to me about bleeding of the nose. Do you want me to go on with the examination?

Mr. Wood: Yes.

A. In view of the fact that he complained of this dizziness and cramping of his legs, a further examination was done which was not done on the first examination in January, when first seen by me. It was found he had an ecchymosis, with blood pressure of 200 over 96; that his pulse was 120; that it was not entirely regular and that some of the

(Testimony of Dr. Theodore J. Pasquesi.)

pulse beats were not felt. As far as the feet were concerned, it was found a tibial pulse, the pulse inside the ankle—they were both quite markedly diminished. His skin was quite dry, and a kind of a dusky purple color.

I interpret the ecchymosis to mean that, besides the other troubles, the man had quite a hypertension and that the cramping in his legs was due to inadequate blood supply.

As far as his back was concerned, it was found he was able to bend over fairly well, no deformity in the back, although he complained of some pain on straightening up. He was rather stiff. No muscle spasm was evidenced.

The examination showed also that he had some limitation of the motion of the hips but no greater than at the first examination.

On listening to his heart it was found that it was quite loud and seemed to cover most of the chest.

Q. That completes your description of the examination, Doctor? A. Yes.

Q. What is your opinion as to his disability at the present time, if any, whether it arises from the accident or from the hypertension, or what?

A. My opinion is that his disability is from both.

Q. Either?

A. His disability at the present time is a result of both the hypertension and he has not recovered completely from his back injury at the time of his accident.

Q. Is it possible to apportion the consequence

(Testimony of Dr. Theodore J. Pasquesi.)

of the blood pressure, the hypertension, and the accident and say that so much of his present condition is due to one and so much to the other?

A. It is very difficult to evaluate it in that sense. However, I do feel the most serious disability here is due to his blood pressure.

Q. Dr. Cherry testified the other day, if I recall his testimony, that he thought Mr. Strand's condition resulting from his fall had reached a stationary stage and that there would be no further improvement. What have you to say about that?

A. It has been six months since the man's accident. I do not think any case at six months can be considered stationary.

Q. Would you anticipate some further improvement in his back?

A. I thought he had improved some in his back. In the two [103] examinations I made the man was more pliable this time than he was before. However, it is rather difficult to evaluate this type of thing to a specific degree because most of the complaints are symptomatic; they are not objective.

The Court: You have his age there?

A. Sixty-three, yes.

Mr. Wood: That is all.

Mr. Jacobson: No questions.

(Witness excused.) [104]

Portland, Oregon, Monday, October 1, 1951

Court reconvened in the above-entitled cause, pursuant to adjournment.

Appearances: Mr. Leo Levenson, of Proctors for

Libelant; Mr. Lofton L. Tatum and Mr. Erskine B. Wood (Wood, Matthiessen & Wood), of Proctors for Respondent.

Mr. Tatum: The Court realizes, of course, the handicap under which Mr. Wood and I appear today. It is our understanding that this is the time set for hearing further medical testimony. I was informed that libelant's proctors were agreeing that there was no connection between the hypertension and the injuries received. I later talked to Mr. Jacobson and he informed me that is not correct.

The Court: Yes.

Mr. Tatum: We have brought Dr. Pasquesi to court today. We have examined the testimony of the doctors at the previous hearing and we find there is no direct testimony one way or the other connecting hypertension to the injuries. We have brought Dr. Pasquesi to court to testify directly upon that point. [105]

DR. THEODORE J. PASQUESI

was thereupon recalled as a witness on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Tatum): Dr. Pasquesi, you testified previously in this proceeding on June 19, 1951. At that time you reported on an examination made of Mr. Strand in January of 1951 and also an examination which you made a few days prior to the trial.

In your testimony you related a finding of blood

(Testimony of Dr. Theodore J. Pasquesi.)

pressure of 200 over 91, pulse 120, as showing a condition of hypertension.

I will ask you in your opinion whether or not this hypertension is connected with the injury which Mr. Strand related to you in his history?

A. In my examination of this man on two different occasions it was my definite opinion there was no connection between the two.

Q. What medical evidence do you rely upon in arriving at that opinion?

A. Well, there are two major causes for blood pressure rising. One of them is due to a weakness in the heart itself, which is a pump, perhaps one or more valves leaking and, therefore, like a leak in any mechanical structure, more effort would have to be put out to get the same kind of an output. [106]

Secondly, as everyone advances in age, the elasticity of the vessels becomes less and less; in other words, they become harder and harder. The term used is arteriosclerosis, which is a relative term, and which everyone has as he gets older, increasing with age. With less elasticity it is necessary for the heart, which is the pump, to work harder to push the blood around to all of these points.

The measure of the amount of energy, in millimeters, that it takes the heart to push the blood around is a blood pressure reading.

On examining Mr. Strand's heart there did not seem to be any valvular leakage. The heart seemed enlarged, as it naturally would be. The heart had to

(Testimony of Dr. Theodore J. Pasquesi.)

put out that much more work over a long period of time.

Q. What is your conclusion as to which of these two reasons was the reason for Mr. Strand's high blood pressure? A. Arteriosclerosis.

Q. In your opinion, is there any connection between trauma, or an injury, the kind Mr. Strand sustained, and hardening of the arteries?

A. No, I don't believe there is any connection.

Mr. Tatum: [107] That is all.

Cross Examination

Q. (By Mr. Jacobson): At the time you made your first examination did you take his blood pressure? A. I did not.

Q. You examined him primarily for his back and leg? A. That is right.

Q. At the time you examined him the first time did he complain to you about any dizziness or nose-bleeds?

A. No, there was no mention of that.

Q. As a matter of fact, according to your testimony at the prior hearing, you testified he merely mentioned that to you the second time, about headaches, together with dizziness, about a month prior to the time you examined him the second time, according to your testimony?

A. I don't recall exactly how it was mentioned. I think it was on direct questioning that it was brought out that the patent had been dizzy.

In this type of an examination, which I am called on to do from time to time, my examination is done

(Testimony of Dr. Theodore J. Pasquesi.)

from an orthopedic standpoint. We usually don't take blood pressure readings or test the eyes or a multitude of things you would do in connection with a general examination.

However, he was complaining of cramping in his legs and stated that he could only walk a few blocks and he had [108] cramps in his legs.

Naturally, in my medical training I was taught that usually a cramping in the legs had something to do with a circulatory disorder. Therefore, I changed my type of examination and went back to check to see if I could find some reason for the cramping in his legs, and I was quite astounded to find that the man had such a high blood pressure.

Q. Didn't he complain to you that he had cramping in the legs on the first examination?

A. I do not recall any such complaint.

Q. Just by general observation of the man's features, did they indicate, on the first examination, that he was suffering from high blood pressure?

A. I can't answer that. I don't know.

Q. If, prior to the accident, Mr. Strand had the symptoms he now complains of, would he have been able, in your opinion, to carry on the work he had been doing as a longshoreman?

Mr. Erskine B. Wood: Can you be a little more definite? Are you speaking of the symptoms in connection with the back injury?

Mr. Jacobson: I mean the hypertension symptoms.

A. Could I have that question again, please?

(Testimony of Dr. Theodore J. Pasquesi.)

The Court: He wants to know if he had this hypertension he has now could he have carried on his work as a longshoreman up to the time of the accident.

A. I am still a little bit vague on the question. [109]

The Court: You go on and ask him.

Mr. Jacobson: Q. Assuming that the man was suffering from the ailments you found him to be suffering from at the time you made your second examination, would he have been able to carry on the work of a longshoreman prior to the accident, if he had it prior to the accident?

A. Cramping, you are speaking of now?

Q. Hypertension.

A. Hypertension? Well, many men work with blood pressures that high. The thing that most impressed me was the fact that he was having cramps in his legs, and dizziness. Those are subjective findings, not objective findings.

I don't know whether he could or not. Those are statements of fact, not findings.

Q. Did you, by chance, examine the clinical record of the man at the hospital?

A. I did not.

Q. You don't know, then, what the blood pressure readings were? A. No, I don't.

Q. At the time he was in the hospital?

A. No, I don't.

Q. Is it not a fact, Doctor, that a man who has longshored to any extent may develop neuritis?

(Testimony of Dr. Theodore J. Pasquesi.)

Which, in turn, increases his blood pressure to the point where it develops into a hypertension? [110]

A. I don't think I can answer that.

The Court: What you mean is that that is not in your field?

The Witness. I don't think I am qualified to answer that, your Honor.

Mr. Jacobson: Q. Assuming there is testimony to the effect that he was suffering from dizziness and nosebleeds and, sometimes, a shortness of breath, and that he loses consciousness and is forgetful,—that if he had those symptoms prior to the accident would he still be able to do longshore work?

A. Of course, that might have been the cause of his accident, you see.

Q. You do not profess to be an expert in the field of hypertension, do you, Doctor?

A. I do not.

Q. Your testimony, as a matter of fact, is based upon the last examination you made when you found him to have high blood pressure?

A. That is correct.

Q. And your conclusion, your opinion, that he had it prior to the accident, is that based upon your medical knowledge of hypertension?

A. My general medical knowledge, yes.

Mr. Jacobson: That is all.

Mr. Tatum: That is all.

(Witness excused.) [111]

[Endorsed]: Filed Nov. 1, 1951.

DEFENDANT'S EXHIBIT No. 12

[Title of District Court and Cause.]

DEPOSITION OF NICHOLAS
VARDALAAHOS

Taken in behalf of Respondent

Be It Remembered That, pursuant to oral stipulation hereinafter set out, the deposition of Nicholas Vardalaahos, the above-named witness, was taken on behalf of the Respondent before Don E. Devlin, a Notary Public for Oregon, on Saturday, the 23rd day of December, 1950, beginning at 9:35 o'clock a.m., at the law offices of Wood, Matthiessen & Wood, 1310 Yeon Building, in the City of Portland, County of Multnomah, State of Oregon.

Appearances: Messrs. Leo Levenson and Samuel Jacobson, attorneys for the Libellant; Wood, Matthiessen & Wood (by Mr. Lofton L. Tatum), attorneys for Respondent.

STIPULATION

(It Is Stipulated and Agreed by and between the attorneys for the respective parties that the deposition of Nicholas Vardalaahos may be taken on behalf of the Respondent at the office of Wood, Matthiessen & Wood, 1310 Yeon Building, in the City of Portland, County of Multnomah, State of Oregon, on Saturday, the 23rd day of December, A.D. 1950, beginning at 9:35 o'clock a.m., before Don E. Devlin, a Notary Public for Oregon, and in shorthand by the said Don E. Devlin.

Defendant's Exhibit No. 12—(Continued)

(It Is Further Stipulated that the deposition, when written up, may be used on the trial of the cause as by law provided; that all questions as to notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time the questions are asked, and that all objections as to materiality, relevancy and competency of the testimony are reserved to the parties until the time of trial.

(It Is Further Stipulated that the reading over of the testimony to or by the witness and the signing thereof are hereby expressly waived.)

Nicholas Zafiratos, Interpreter, was thereupon sworn by the Notary.

NICHOLAS VARDALAAHOS

was thereupon produced as a witness on behalf of Respondent and, having been first duly sworn by the Notary, was examined and testified through the interpreter as follows:

Direct Examination

Q. (By Mr. Tatum): Your name is Nicholas Vardalaahos? A. Yes, sir.

Q. Are you the Second Mate aboard the S.S. Stathes Yannaghas? A. Yes, sir.

Q. Is that ship going to leave Portland today?

A. Perhaps; probably.

Q. Do you expect to be back in Portland within the next three months?

Defendant's Exhibit No. 12—(Continued)

A. They believe so. Not quite positive.

Q. Do you know the route that your ship will take for the next six months?

A. I don't know.

(Discussion off the record.)

Mr. Tatum: Q. Were you on the Stathes Yan-naghas on December 12, 1950, in Portland, Oregon, when a longshoreman was hurt in the No. 4 hatch of that ship?

A. I was on the ship.

Q. Did you see this longshoreman, whose name was Strand, fall in the No. 4 hatch?

A. I was—I didn't exactly see him fall. I saw him working with the tools and then in the split second he was gone.

Q. Where were you standing when you saw this man doing the work which resulted in his fall?

A. I was standing on the hatch above him to his left and I saw him fall, saw him doing the—

Mr. Evangelos Livaniou: On the left, port side of the deck, of the hatch. He was standing on the port side of the hatch square.

Mr. Tatum: Do you want to incorporate that in his answer?

Mr. Evangelos Livaniou: Now I am explaining that he does not describe it as it is in his explanation, you see.

Mr. Nicholas Zafiratos: I am mixed up with these technical terms here. I never heard the word "hatch" before.

Mr. Tatum: If there is any objection to this

Defendant's Exhibit No. 12—(Continued)

added interpretation, say so, and we will cross it off. I think it adds to it.

Q. Was this accident that you witnessed at about three to three fifteen o'clock in the afternoon?

A. It was at that time.

Q. About how far away in feet were you from the man when you first saw him?

A. Twelve feet in a direct line.

Q. Where was the longshoreman standing when you first saw him?

A. (Through Evangelos Livaniou as interpreter): At the third hatch board, hatch board on the second space from forward, starting from forward.

(Discussion off the record.)

Mr. Tatum: Q. Were there any hatch boards in place in the forward space?

A. (Through Evangelos Livaniou as interpreter): They were the two hatch boards on the forward space and two hatch boards on the second space.

Q. Were these two hatch boards that were in place in the forward space and the hatch boards that were in place on the second space on the starboard side or the port side?

A. To the starboard side. On the starboard side beginning from the square of the hatch of 'tween decks towards the port side.

Q. Were these hatch boards being put in place in the 'tween decks or on the main deck?

Mr. Evangelos Livaniou: Repeat please.

Defendant's Exhibit No. 12—(Continued)

Q. Were these hatch boards being put in place in 'tween decks or on the main deck?

A. On 'tween decks.

Q. Where was the man standing with reference to the athwartship, towards the center of the ship or towards the starboard side or towards the port side, the longshoreman?

A. To the starboard side of the ship. Between the forward, the forward aft line of the ship. That means between the middle of the ship and the starboard side of the square of the hatch.

Q. Was the longshoreman standing on the first space, forward space, or the second space?

A. On the second space.

Q. What was the longshoreman standing on when you first saw him?

Mr. Evangelos Livaniou: What?

Mr. Jacobson: What?

Mr. Tatum: Q. Yes, on what was he standing?

A. On the hatch board on the second space.

Q. Was the hatch board squarely placed between the hatch beams, the one on which the longshoreman was standing? A. No.

Q. How was that hatch board placed?

A. The hatch board that the longshoreman was standing on the forward, from the forward part, it was in its place, but the aft part was standing on the vertical flange of the beam.

Q. What was the longshoreman doing when you first saw him?

A. When he—when I first saw him, I saw him

Defendant's Exhibit No. 12—(Continued)

keeping a piece of wood, a length of wood, like I say, which he was trying to put the forward hatch board on the forward space, the forward hatch board from these hatch boards that he was standing, on the forward space, and trying to put that hatch board on its place with that piece of wood between the forward beam and the hatch board. If you want me to describe, sketch, like I say, I could give it, the sentiment, to understand me better what I mean.

Q. Mr. Vardalaahos, would you draw a sketch of what this man was doing when you saw him (handing paper and pencil to the witness).

A. (Witness drawing): Those four hatch boards, one, two, on the forward space and one, two, on the second space were in their places.

Q. Now, the ones that are marked on this sketch as number one and number two forward and number one and two in the after space were the four hatch boards that were squarely in place at the time?

A. Yes, this hatch board, the third hatch board on the, on the first space was not squarely placed as the others, and was on the beam also, the aft hatch board, directly from the one we mentioned, the third one was on the beam.

Q. Then, as I understand it, the two hatch boards we've numbered as "3" were not in place——

A. No.

Q. ——squarely, but were resting with the forward ends of each hatch board in place?

Defendant's Exhibit No. 12—(Continued)

A. In its place, yes.

Q. And the aft end of each hatch board——

A. On the beam.

Q. ——were upon the beam? A. Yes, sir.

Q. Those are the number 3's? A. Yes.

Q. Now——

A. (Continuing): The longshoreman was standing on the third hatch board on the second space, having a wood between the beam and the third hatch board on the first space trying to put the third hatch board of the first space in its place.

Q. Then what happened while he was doing that?

A. Well, after that actually show this whole business put in, trying to put this hatch board, the third hatch board of the space with the wood and, of course, in a few seconds he just heard the knock, a knock, and just looking again he, he wasn't following, he says, always the longshoreman with his eyes. He says he not follow with his eyes. He heard the knock and he looked down and saw the man below in the hatch.

Q. Then what did you do?

A. Well, just he sent for me. He sent for me.

Q. He sent for the Mate?

A. Yes, and at once then when he called me I went down below the hatch and trying—in the meantime another workman, longshoreman, went down below in the place that the man was fall down.

Q. Was there anyone else standing on the deck with you, Mr. Vardalaahos?

Defendant's Exhibit No. 12—(Continued)

Mr. Evangelos Livaniou: On the main deck, you mean?

A. No, he was not anyone with him, but there was some longshoremen on the starboard side of the main deck.

Mr. Tatum: That's all.

Cross Examination

Q. (By Mr. Jacobson): How long have you been in the ship's service?

Mr. Evangelos Livaniou: In that ship's service or all sea life, you mean?

Q. On the ship.

Mr. Evangelos Livaniou: On that ship.

A. From 11th of March.

Q. Do you know how old the ship is?

A. 1944 builded.

Q. What type of cargo is it capable of carrying?

A. Anything.

Q. Do you know what the longshoremen were doing on the ship in Portland, Oregon?

Mr. Evangelos Livaniou: Pardon?

Q. Do you know what the longshoremen were doing on the ship in Portland, Oregon, at this particular time when the accident happened?

A. They were doing shifting boards. That means lining. We call it shifting boards.

Q. They were lining the ship for a certain type of cargo? A. Yes.

Q. What type of cargo were they lining the ship for? A. For grain.

Defendant's Exhibit No. 12—(Continued)

Q. Are you acquainted with the structure of the hatch boards, hatch covers?

Mr. Evangelos Livaniou: Acquainted?

Q. Acquainted. Does he know them?

Mr. Evangelos Livaniou: Repeat please the question.

Mr. Jacobson: Read it.

(The question was read by the reporter.)

A. Yes.

Q. Will you describe the type of hatch covers that are used on this boat that you are on now.

Mr. Evangelos Livaniou: If he could describe the hatch board?

Q. That are used on this boat.

Mr. Evangelos Livaniou: Uses in that ship.

A. These hatch boards are standard, every liberty ship has the same hatch boards.

Q. What type are they? We would like to know in the record what type they are. How are they built?

Mr. Evangelos Levaniou: You mean you want him to describe you, to sketch you?

Q. Well, what we want to find out is if they are one board or whether they are several boards put together or whether they are made of steel or what they are made of, how they are made.

A. Each hatch board, each hatch board consists from three planks, like I say, from three pieces, and between—pass through that pieces is a, pass an iron bar, and on the forward, on the one side, end

Defendant's Exhibit No. 12—(Continued)

of the hatch board, and on the other side, other end, other side of the hatch board it is round with an iron blade, like I say, about so wide (indicating), about three inches wide and thickness, with a one-eighth, let's say, and this is connected with boards on the rivets from one side to the other, you know, between the plank. On the cover the handle is also in one corner and the other corner they have a handle that everybody, two men can lift it and move it where they like.

Q. Are they pretty heavy, are they very heavy?

A. No.

Q. About how much do they weigh?

A. About 15 to 20 pounds.

Mr. Evangelos Livaniou: When he say about around 20 pounds, but, you know, he can't describe exactly the weight. He can lift it by himself.

Q. Around the end of these hatch covers you say that there are iron bands; is that correct?

Mr. Evangelos Livaniou: Iron blades, you mean?

Q. Iron bands. A. Yes.

Q. Is some of the wood permitted to stick out a little bit beyond the iron bands?

A. About half an inch, just half an inch outside from the—

Mr. Evangelos Livaniou: Well, make this suggestion for you. I will just to explain you exactly what I mean. This is the hatch board (indicating); this is consists from one, two, three pieces. The thickness of the hatch board is about three inches. Well, through in the middle pass one iron bar, all

Defendant's Exhibit No. 12—(Continued)

the pieces, right in the meantime connects the board here and here around here is about like this, around here, all here it is the iron blade (indicating). And here it is with rivets and bolts, also the other side. In the meantime the iron blade comes about here (indicating). See, from here to there it is the half inch that we say.

Q. It is wood? A. Yes.

Q. Now, these hatches are made to fit on the flange between the uprights of the cross beams; is that correct?

Mr. Evangelos Livaniou: Repeat the question, please.

Mr. Jacobson: Read it.

(The question was read by the reporter.)

Mr. Evangelos Livaniou: The uprights, what do you mean by "uprights"?

Q. Between the cross beams or what are known as strong backs—

Mr. Evangelos Livaniou: Yes.

Q. —there are flanges that stand out.

A. Flanges.

Q. And then vertical?

A. Vertical and horizontal.

Q. Vertical. Now, the vertical—the hatch covers fit on the horizontal flanges and snugly between the vertical flanges of the strong backs; is that correct?

Mr. Evangelos Livaniou: I will ask him.

A. Yes.

Q. These hatch covers are supposed to fit in any

Defendant's Exhibit No. 12—(Continued)

one of these sections of the hatch; is that correct?

A. You see, it depends from the cuts, and number four of the square cut, in 'tween decks, the forward hatch boards, the forward hatch boards they don't fit in, on the others, on all other spaces; all the hatch boards of all other places with the exception of the forward one, they don't fit on the forward space.

Q. Are the hatch covers in the No. 4 hatch marked so that you could place them exactly in a given spot in the various sections of the hatch?

A. No.

Q. How many hatch covers are needed in order to close off the No. 4 hatch altogether?

Mr. Evangelos Livaniou: You mean the 'tween decks or the main deck?

Mr. Jacobson: The 'tween decks, that is the one we are involved with.

Mr. Evangelos Livaniou: The one talking about?

Mr. Jacobson: That is right.

A. It is about 10 on each space.

Q. (By Mr. Jacobson): And there are six spaces; is that correct? A. Six spaces, yes.

Q. The hatch covers on the ship now, are they new hatch covers?

Mr. Evangelos Livaniou: You mean brand new?

Mr. Jacobson: Yes.

Mr. Evangelos Livaniou: Brand new?

Mr. Jacobson: New. New.

Defendant's Exhibit No. 12—(Continued)

A. They didn't come just from the shop right now but it is in a very good condition.

Q. The question I asked is whether they are new.

Mr. Evangelos Livaniou: You mean just to buy it?

Mr. Jacobson: Yes, new. New.

Q. Are they new? A. No.

Mr. Tatum: I think he answered that. He said they came from the shop.

Mr. Evangelos Livaniou: I gave the explanation, sir, that it is not from the shop but they are in a very, very good condition. That's correct.

Mr. Tatum: That was his answer.

Mr. Jacobson: Now, is that the answer that—

Mr. Evangelos Livaniou: Of the gentleman, yes. Of the gentleman.

Mr. Jacobson: That he gave?

Mr. Evangelos Livaniou: Yes.

Mr. Jacobson: Q. Is it not a fact that it was necessary to use 2 by 12 boards to fit into some of these sections of hold No. 4 because the hatch covers would not fit?

Mr. Evangelos Livaniou: It was not—

A. It was not necessary.

Mr. Tatum: Now, you ask him, don't answer it.

Mr. Evangelos Livaniou: Yes. Yes, I am asking the question again.

Mr. Tatum: Yes, don't answer it on your own.

A. It was necessary.

Mr. Jacobson: He wants to repeat the question?

Mr. Evangelos Livaniou: Yes.

Defendant's Exhibit No. 12—(Continued)

(The question was read by the reporter.)

A. Yes. It was necessary to put this board 2 by 12 just to try to put the hatch board in its place.

Mr. Jacobson: Q. Isn't it a fact that the hatch boards were unable to fit in between the strong backs and that was the reason why they had to use 2 by 12 boards?

A. He doesn't know. He does not know that.

Q. You saw the hatch covers on the ship, did you not, after they had put on 2 by 12 boards in their place?

Mr. Evangelos Livaniou: Repeat the question please.

(The question was read by the reporter.)

(Discussion between interpreters.)

Mr. Evangelos Livaniou: Read it again please.

(The question was ready by the reporter.)

Mr. Evangelos Livaniou: Read it again, will you please?

(The question was read by the reporter.)

A. Yes, I saw that.

Mr. Jacobson: Q. Then they used these 2 by 12 planks because they could not use the hatch boards in position, couldn't place it in position?

A. He doesn't know why they put these hatch boards. Because they couldn't use the hatch boards without putting this 2 by 12 boards.

Defendant's Exhibit No. 12—(Continued)

Q. In other words, the hatch boards just wouldn't fit in their place?

A. He said they could put the hatch boards.

Mr. Nicholas Zafiratos: They could have put the hatch boards in.

Mr. Evangelos Livaniou: Instead of putting the 2 by 12's.

Q. You stated before that the longshoreman was trying to pry, to place one of these hatch boards, hatch covers? A. Yes, sir.

Q. And the reason why he was trying to force it into place is because it wouldn't fit?

A. He doesn't know if the hatch, this hatch board was fitting or not, if it was long, short or if he didn't put it right in a right position to fit right away or something. And if they show, when they understand that this hatch boards, they don't fit properly, they had to tell us to tell the Mate that this hatch boards are not fitting.

Q. That isn't the question.

A. As they did ask some other things about the ladders and we did repair them. We did repair these ladders for them and so on and so forth.

Q. The question is whether or not these hatch boards that were on the ship, or the hatch covers that were on the ship, whether or not they were able to fit in the No. 4 hold in the 'tween decks, these very sections formed by the strong backs, that's the question.

Mr. Evangelos Livaniou: Yes, he's——

Mr. Jacobson: Ask him that.

Defendant's Exhibit No. 12—(Continued)

Mr. Evangelos Livaniou: I said it means him——

A. I said that I don't know if he was putting the boards in the right position so to fit properly.

Q. Now, these boards, these hatch covers, were not numbered in any way, were they?

A. In no ship it is, they are numbers on the hatch boards.

Q. Well then, these were not numbered?

A. Not—not this ship the hatch boards are numbered, not even in our ship, but we have the example that the two hatch boards on the forward space, the two first hatch boards on the forward space, they were already in their places.

Q. And these two hatch boards were fitting very snugly: is that correct? They fitted snugly in place?

A. Yes, it was very good placing.

Q. Now, if these hatch covers, except those that you say are smaller for the number one section of the forward part, are all alike, why would it be necessary to try to pry them into place?

Mr. Evangelos Livaniou: Would you read the question?

(The question was read by the reporter.)

A. Maybe anything else, maybe something else happened.

Q. Now, these strong backs on the 'tween decks, were they all in line, were they all lined properly?

A. There is a slight difference. There is not—it is not straight line, it's a little bit declination, like I say.

Defendant's Exhibit No. 12—(Continued)

Q. They actually are not in first class shape; is that correct?

A. Is not as they were at the first moment it been put in its place.

Q. They have crooks in some of them, is that correct?

Mr. Evangelos Livaniou: Crooks?

Mr. Jacobson: Yes, bends in some of them. Bends?

Mr. Evangelos Livaniou: What do you mean, the whole beam? The whole beam?

Mr. Jacobson: They are warped, they are not in line.

Mr. Evangelos Livaniou: The whole beam?

Mr. Jacobson: Yes, the strong beam, the strong backs.

A. There is a regular bended, it is not waving, but just a regular bend.

Q. So that none—so that they are not all parallel with each other like they were when the ship was first built?

A. (Drawing on envelope): They are parallel, but they are—it is a little bit bended as you see here there on the sketch (indicating).

Q. Now, is that the way they were supposed to be when the ship was first built? A. No.

Q. And these bends in these strong backs, is that the reason why these hatch covers wouldn't fit as they are intended to fit snugly on the flanges?

A. There is not absolutely the reason that the hatch boards were not, they were not fitting for that

Defendant's Exhibit No. 12—(Continued)

bending. They kind of put it in its place, but it needs trying.

Q. You would have to pry them in order to put them in their place?

A. You have to try. He said that he has—you have to try.

Q. You have to force them?

Mr. Tatum: No, try.

A. Try.

Mr. Jacobson: Try.

Q. Now, those strong backs are not in first class shipshape condition, are they?

(Discussion between interpreters.)

Mr. Evangelos Livaniou: What do you mean by "first class"?

Mr. Jacobson: A shipshape condition so that the hatch covers would fit without having to work at them, just put them in place and that would be the end of it. Without forcing them.

Mr. Evangelos Livaniou: The beams? Read it please.

(The question was read by the reporter.)

A. Only No. 4 hatch it happens to these and it is because of the construction of the liberty ships. Every ship has the same, let us say, trouble with these beams. And——

Q. It is just——

Mr. Tatum: Let him finish.

A. (Continuing): Other than it happens to this, this happens, this little bended happens in No. 2 or

Defendant's Exhibit No. 12—(Continued)
other in No. 4 because of the construction of the liberty ship.

Mr. Jacobson: Q. In other words, it is because of defective construction that is causing these beams to get out of line?

Mr. Evangelos Livaniou: Yes, that is what it means—

Mr. Jacobson: Ask him the question.

A. Yes.

Q. And that's the reason why you have got to sometimes use 2 by 12 boards instead of the hatch covers to cover the sections?

A. We never use these hatch boards 2 by 12's because we put, we use a bulk cargo, cargo in bulk.

Q. You always use bulk cargo in this ship?

A. Most of voyages we carry bulk cargo.

Q. And you don't bother putting the hatch covers on the 'tween decks at all then?

A. Only if we put different cargo than bulk, then we have to put the hatch boards on the 'tween decks.

Q. Did you have to put the hatch boards on the ship now because of the type of cargo you are going to pick up in this locality?

Mr. Evangelos Livaniou: Now?

Mr. Jacobson: Yes.

A. Now, it's not necessary, the hatch boards to go in their places because the whole cargo it is one type.

Q. Does he know why they were putting the hatch covers then on the 'tween deck?

Defendant's Exhibit No. 12—(Continued)

A. You see, he didn't know why they putted this hatch board on their places, but afterwards he learned why they were put in this hatch boards.

Q. Why were they doing that?

A. Because they said that the—they were going to make lining.

Q. Well, in order to line the ship then it is necessary to put the hatch covers on the 'tween deck hold No. 4?

A. They put it for their own safety.

Q. And the ones that came with the ship apparently didn't fit; is that correct?

Mr. Evangelos Livaniou: Repeat it.

(The question was read by the reporter.)

A. Apparently they didn't fit, no. Didn't fit.

Q. Didn't fit into this hatch No. 4?

Mr. Tatum: The hatch boards. Make it the hatch boards.

Mr. Jacobson: Q. The hatch boards didn't fit in hatch No. 4?

Mr. Evangelos Livaniou: Repeat it, please.

(The question was read by the reporter.)

A. If they were trying they could find the hatch boards that were going in their places.

Q. They would have to then select from the 60 hatch boards the exact kind of hatch board that might fit in a specific section; is that correct?

(Short recess.)

Mr. Jacobson: All right, repeat the question.

Defendant's Exhibit No. 12—(Continued)

(The question was read by the reporter.)

A. Well, they have to do it as far as they could, they could make them fit.

Q. The answer then is that they would have to make a selection?

A. For their own safety they have to do it or they had to call the Mates.

Q. Does he know how far the longshoreman fell into the hold?

Mr. Evangelos Livaniou: You mean inside?

Mr. Jacobson: The distance, yes.

A. About 22 feet. About 22 feet, but you can find out, of course, by measuring, exactly.

Q. Was there anyone else standing with Mr. Strand in the 'tween decks working on these hatches, hatch covers?

A. When he first saw Mr. Strand, he saw only Mr. Strand, but as when he fell down he saw another man going from 'tween deck down to the main hold, so he doesn't know where he was. Maybe he was aside and he couldn't see, he didn't see him at once, you know.

Q. Does he know whether or not the seamen on the boat know exactly what hatch boards to place in these various sections in order for them to fit?

Mr. Evangelos Livaniou: Repeat.

(The question was read by the reporter.)

A. Our seamen put them in their places if it is necessary.

Defendant's Exhibit No. 12—(Continued)

Q. Well, do they know exactly which hatch cover to put in which specific spot?

A. All hatch boards are the same, but if one does not fit in this place, they leave it and take another one which goes and so on so forth.

Q. Well, the hatch boards then are placed around the hatch hold itself, all around; they are not piled in one spot, are they, when the hatch is open?

A. They are in a—in their places as they take them off. They put it in place and to show—if they want to put it back again, they take from the same place and put it.

Q. Now, were the hatch covers aboard the ship at the time Mr. Strand was putting them in place, were they piled up that way?

A. When he saw them they were like this.

Q. Did Nicholas show them exactly where to put these various hatch boards?

Mr. Evangelos Livaniou: Repeat, please.

(The question was read by the reporter.)

Mr. Evangelos Livaniou: Show them? You mean tell them, point them?

Mr. Jacobson: Yes.

Mr. Tatum: Show the longshoremen, you mean?

Mr. Evangelos Livaniou: You mean show the longshoremen?

Mr. Jacobson: Yes.

A. No, no one longshoreman came to ask him to point, to show him the hatch boards.

Defendant's Exhibit No. 12—(Continued)

Mr. Jacobson: Q. Did Nicholas or anyone else that he knows of tell the longshoremen that they'd have to try to fit these various hatch boards in certain spots because the strong backs were not even or straight?

Mr. Evangelos Livaniou: Read it.

(The question was read by the reporter.)

A. No, no one told them because, because no one knew that they were working in No. 4 because they had only just gone down and they had put only just a few hatch boards in their places.

Q. Well then, no notice was given to these longshoremen that the strong backs and the hatch covers had to be matched in order for them to fit?

Mr. Tatum: No notice by whom?

Mr. Jacobson: No notice was given by anyone on the ship.

Mr. Tatum: If he knows.

Mr. Jacobson: If he knows.

A. First of all no one told us that they were going to work in No. 4 or that they wanted to put hatch boards in 'tween deck of No. 4, and so no one told them.

Q. Nicholas saw them working on the No. 4 hatch, did he not?

A. He didn't, he didn't see them working in No. 4 hatch. He was forward and as he was coming aft he passed from No. 4 and saw, and saw the accident happened.

Defendant's Exhibit No. 12—(Continued)

Q. He just happened to be passing by the hatch when he saw the accident happen?

A. Yes, just by like, let us say, he passed through the hatch, has not a special job to go in No. 4 hatch to see what happens in there because we didn't have anything to do to look after the longshoremen doing the lining.

Q. He didn't stop, did he, to look down from the main deck into hold No. 4 and see what was going on?

Mr. Evangelos Livaniou: Repeat, please.

(The question was read back by the reporter.)

A. Yes, he stopped but as he stopped he saw the longshoreman, what he was trying, so he didn't have even time to tell him anything because just in the meantime he fell. This happened, he says, in just a few seconds.

Mr. Jacobson: Now, what is your name? You were acting as an interpreter and we would like to know what your position is on the boat and your name.

Mr. Evangelos Livaniou: My name—I have given him my name—is Evangelos Livaniou.

Mr. Jacobson: What is your position on the boat?

Mr. Evangelos Livaniou: Chief Officer.

Mr. Jacobson: That's all.

Mr. Tatum: I would like to ask a question of the interpreter into the record. You have been present during all of this testimony, have you not?

Mr. Nicholas Zafiratos: Yes, sir.

Defendant's Exhibit No. 12—(Continued)

Mr. Tatum: You have heard the interpretation of the questions which were propounded by me and by Mr. Jacobson. Has that interpretation as given by Mr. Livaniou been a full, true and correct interpretation of the questions?

Mr. Nicholas Zafiratos: Yes.

Mr. Tatum: Have you also listened to the answers as given by Mr. Vardalaahos?

Mr. Nicholas Zafiratos: Yes.

Mr. Tatum: Have you listened to the interpretation of those answers as given into the record by Mr. Livaniou?

Mr. Nicholas Zafiratos: Yes.

Mr. Tatum: Has the interpretation given been a full, true and correct interpretation from Greek into English of Mr. Vardalaahos' answers?

Mr. Nicholas Zafiratos: Yes.

Mr. Tatum: I would like to ask one further question of Mr. Vardalaahos.

Q. Have you served on other liberty ships than this present ship?

A. (Through Mr. Evangelos Livaniou as interpreter): From 1946 up to date on liberty ships.

Q. Is the construction of this ship so far as you can tell the same as the construction on other liberty ships that you have served on?

A. Yes, it is all about the same. The construction of the liberty ships, the ones that he has served on.

Mr. Tatum: Mr. Vardalaahos, would you sign

Defendant's Exhibit No. 12—(Continued)
this little sketch that you made for us earlier in the testimony.

(Witness complies.)

(Discussion off the record.)

Mr. Tatum: Q. Mr. Vardalaahos, when the reporter has finished transcribing your deposition, you have the right to read it over and sign it. You likewise have the privilege of waiving that. I ask you if you waive the reading and signing of your deposition?

A. (Through Mr. Evangelos Livaniou as interpreter): The answer is yes.

(Witness excused.)

(Signature waived.)

State of Oregon,
County of Multnomah—ss.

I, the undersigned, Don E. Devlin, a Notary Public for Oregon, duly commissioned and qualified, do hereby certify that Nicholas Vardalaahos appeared before me at the time and place mentioned in the caption and stipulation set out on pages numbered 1 and 2 of the foregoing transcript; Messrs. Leo Levenson and Samuel Jacobson, of attorneys for plaintiff, appearing in his behalf, and Mr. Lofton L. Tatum, Esq., of attorneys for defendant, appearing in its behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, in answer to oral in-

Defendant's Exhibit No. 12—(Continued)

terrogatories and cross interrogatories propounded by the attorneys for the respective parties, testified as in the foregoing annexed deposition, pages 1 to 27, both inclusive, set forth.

I further certify that all interrogatories and cross interrogatories propounded to said witness, together with the answers of said witness thereto, and other proceedings occurring upon the taking of said deposition were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction, and that the foregoing transcript, pages 1 to 27, both inclusive, constitutes a full, true and accurate transcript of said deposition so taken by me in shorthand as aforesaid, and of the whole thereof; and that the submission of the deposition when fully transcribed to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance and signing of same by the witness were waived by the witness and by the parties.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

In Witness Whereof, I have hereunto set my hand and notarial seal this 6th day of January, A.D. 1951.

[Seal]

/s/ DON E. DEVLIN,

Notary Public for Oregon.

My commission expires February 3, 1952.

DEFENDANT'S EXHIBIT No. 14

Theodore J. Pasquesi, M.D.

Physician and Surgeon, Orthopaedic Surgery
916 Old Journal Bldg., 806 Southwest Broadway
Portland 5, Oregon

January 26, 1951

Wood, Matthiessen & Wood, Attorneys,
Yeon Building, Portland, Oregon.

Re: Olaf Strand, Jones Stevedore Co.
Attention: Mr. L. Tatum

Dear Sirs:

Mr. Strand reported to my office 1/25/51 for examination relative to injuries sustained on 12/12/50 when, while working for the Jones Stevedore Company aboard ship (he does not know the name of the ship), he was injured as he was lining a twin deck. One of the hatch covers slipped and he fell about twenty-five or thirty feet, striking the bottom of a hold. He states he was unconscious until he was on the dock lying on a stretcher waiting for an ambulance. He was then taken to St. Vincent's Hospital where he was seen by Dr. Howard Cherry of Portland. Dr. Cherry sutured a laceration of his lower lip, placed him in bed and gave him symptomatic and emergency treatment. The next day his back was x-rayed but he states no fractures were found. He was kept in bed for most of the next three weeks and was discharged from St. Vincent's Hospital some time between Christmas and New Year's

Defendant's Exhibit No. 14—(Continued)

Day of 1950. He has reported on two subsequent occasions to Dr. Cherry's office.

The injuries the man sustained were a cut of the lower lip on the left side, a painful back and a painful left leg from the left knee to the hip on the inside. His back bothers him mainly when he tries to stoop over. He is using a cane because of pain on the inside of his left knee and upper leg.

Past History: The man is a 63 year old male, who has worked for the past 30 or 40 years as a longshoreman, and has previously had only one accident, that being a fractured toe about 15 years ago.

Present Complaint: His back is stiff, but not very painful. When he bends over he has to go slowly because he will lose his balance, and he has some pain on extreme bending. He also states that his left leg is insecure and that it hurts him to twist his knee in with his foot in a stationary position.

The man was stripped for examination. It is found that he has about a one inch curved laceration at about the junction of the middle and outer thirds of the lower lip on the left side. This scar extends into the mouth itself. This is fully healed, non-adherent, non-painful, but is depressed in the center and leaves a cosmetic deformity, not functional, however. In the standing position the man was asked to touch the floor with his hands without bending his knees and is able to come within 10 inches of the floor. He goes slowly. but no muscle spasm is evident. He states he has a feeling of pulling while doing this. In the prone position no marked tender-

Defendant's Exhibit No. 14—(Continued)

ness is found in his back and in the supine position it is found that he has some limitation of external rotation of both hips amounting to about 30 degrees. Abduction of the left hip with the knee flexed and external rotation of the hip at the same time causes pain in the region of his knee on the medial side and extending up from the knee about six inches. Internal rotation of the knee with the leg bent causes the same type of pain. The man was asked to squat with his legs beneath him and this also elicited pain to the same region. Examination of the knee reveals that all the ligaments are intact, there is no tenderness in the region of the semilunar cartilages, there is no tenderness to touch. His reflexes are all equal and normal on both sides. The man was sent to the Physicians and Surgeons Laboratory in the Jackson Tower for x-rays of his lower back and his left knee. There are no pertinent pathological deformities of note. The x-ray report by the radiologist is as follows: "Lumbar spine: there is no evidence of recent bone injury. There is moderate arthritic lipping of the entire lumbar spine. There is moderate narrowing of the lumbosacral interspace, with some sclerosis of the apposing joint surfaces. There are some calcified plural plaques over the base of the left lung posterior. Left knee: There is no evidence of recent bone injury. There are no significant arthritic changes present."

Diagnosis: As a result of this injury this man sustained a laceration of the left lip which now

Defendant's Exhibit No. 14—(Continued)

leaves no disability except a cosmetic deformity. He received a lumbo-sacral contusion and sprain which should recover under conservative therapy. The pain in his knee I do not believe is related to his knee directly, but rather is a sartorius muscle sprain.

Conclusion: Because of this man's age he will recover slowly. It is my impression that he will be unable to do longshoring work for a period of about three months but that he should have no permanent disability at the conclusion of this period of time except for the obvious deformity of the lip, which is cosmetic rather than functional.

Sincerely,

/s/ THEODORE J. PASQUESI,

TJP:em

[Endorsed]: No. 13229. United States Court of Appeals for the Ninth Circuit. Michael Kulukundis, Appellant, vs. Olaf N. Strand, Appellee. Apostles on Appeal. Appeal from the United States District Court for the District of Oregon.

Filed: January 11, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

In Admiralty

No. 13,229

MICHAEL KULUKUNDIS,

Appellant,

vs.

OLAF N. STRAND,

Respondent.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD ON APPEAL

Point I.

That the ship was not unseaworthy nor negligent, since seaworthiness is merely reasonable fitness, and the hatch-boards could have been made to fit, and if not, other boards were aboard which could have been, and in fact were, subsequently used and fitted by the stevedores themselves.

Point II.

Neither the alleged unseaworthiness of the hatch beams and boards, nor the alleged negligence in those respects was the proximate cause of libelant's injury, but the proximate cause was the act of the stevedores themselves, (fellow workmen), not servants of the ship, in wrongly placing the board or boards on the beams in such manner as to make it possible for libelant to fall.

Point III.

Libelant saw and appreciated the conditions; says that he considered them dangerous; was under no obligation, like a seaman, to stay on the job, but nevertheless chose to do so, and assumed the risk, whether it be of unseaworthiness, or negligence.

Point IV.

Libelant's own sole negligence was the proximate cause of his injuries.

Point V.

Libelant's own negligence, if not the sole, was at least a contributory cause of his injuries.

Point VI.

The damages are excessive.

DESIGNATION OF RECORD

1. Amended Libel.
2. Claim of Owner.
3. Answer to Amended Libel.
4. Transcript of all testimony, together with exhibits.
5. Findings of Fact and Conclusions of Law.
6. Final Decree.
7. Notice of Appeal.
8. Petition for Appeal.
9. Order Allowing Appeal.

10. Citation.
11. Appellant's Assignments of Error.
12. Bond on Appeal.
13. Order Approving Bond for Staying Execution.
14. Points on which Appellant intends to rely.
15. This Designation of Record.

Dated at Portland, Oregon, January 16th, 1952.

/s/ WOOD, MATTHIESSEN & WOOD,
/s/ ERSKINE WOOD,
Proctors for Appellant Michael
Kulukundis.

Acknowledgment of Service attached.

[Endorsed]: Filed Jan. 18, 1952. Paul P. O'Brien,
Clerk.

